

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL REFERENCE NO.69 OF 2008**

*(Reference arising from the ruling of the Court of Appeal of Uganda at Kampala in Civil Application No.84 of 2007 by Her Worship G.K.Nakibuule Ag. Registrar Court of Appeal dated the 16/9/2008.)*

**CHARLES MAYAMBALA.....APPLICANT/APPELLANT**

**VERSUS**

**STANBIC BANK.....RESPONDENT**

**CORAM: HON. A.E.MPAGI-BAHIGEINE, DCJ**

**RULING**

This ruling arises from an application, dubbed “Civil Reference” by Charles Mayambala, appearing in person. Mr Earnest Senabulya Kaggwa represented the respondent.

**Background**

The brief background facts are as follows:

The dispute between the parties to this application arises from a High Court Miscellaneous Cause No.160 of 1981, filed by the applicant, seeking declarations that the sale of his property comprised in Kibuga Block 1 plot 296 was wrongful. This was dismissed way back on 9/1/1992, by Justice Louis Ongom. [RIP]

Following the dismissal, the applicant did not take any step to appeal the decision for a period of up to five years, until 22/12/1997, when he applied for extension of the time within which to appeal.

Ultimately when the Court of Appeal granted the application for the extension of time the applicant, instead, filed several other applications on the same subject matter. Viz:

- (a) Civil application No.52 of 1998 for leave to extend time to file Notice of appeal, filed in the Court of Appeal which was dismissed.
- (b) Civil Application No.22 of 2003 to the Supreme Court for leave to extend time to file Notice of Appeal which he later withdrew.
- (c) Civil Application No.53 of 2005 for extension of time to file a Notice of Appeal out of which Application 84 of 2007, arose and the ruling therefore which is the subject of this 'reference'.

The court, however, allowed the applicant to file Civil Appeal No.4 of 1998 out of time, the hearing of this appeal was frustrated by the applicant/appellant himself when he kept on peremptorily discharging his lawyers and eventually disowning the record of appeal in this matter.

The property which is the subject matter of this application was at the time of arguing the application registered in the names of Francis Kaketo & Restetuta Nasozi Kaketo after having passed through a series of transfers from James Musinguzi, Stem Muyanja and finally to the current registered proprietors.

The applicant now seeks to have all this reversed on the following grounds namely that:

1. ***Her worship erred when she made insufficient study or insufficient reflection of her study over breach of the principle of res judicata by the respondents.***
2. ***Her worship erred in fact when she made insufficient study of the record of appeal and held that the appellant was guilty of a lot of dilatory conduct on his part contributory to the occasioned extremely long delay to process the appeal.***
3. ***Her worship erred when she turned cruel to abuse of appellant's person presenting him as being an unreasonable person and used gross exhibited dilatory conduct.***

4. *Her worship erred when in her tone she expressed disgust and desire to end litigation there and then on the ground of disgust at which she accordingly dismissed applicant's application for extension of time.[sic]*

**Applicant's submissions on ground 1**

*"The learned Ag Registrar briefly touched in nine words in the ruling on page 10 between lines 10 and 15 regarding on the appellant's plea that the respondent had also breached the doctrine of res judicata without revealing her understanding of, the fact that the new case which was filed by the respondent on top of another i.e. High Court Miscellaneous Cause No.1 of 1981 was a fraudulent case by notice of motion, being in breach of section 324 of the Penal Code statute for fraud, there having been no public auction held which would properly guide her in the ruling.*

*In the notice of motion it was stated:*

- (i) *That James Musinguzi bought the suit property in public auction and he paid 769,000/= and it was also argued by Counsel Byamugisha in court and it is stated in the proceedings that James Musinguzi bought the suit property in a public auction and he paid shs.769,000/=.*
- (ii) *By 10 years later when the suit was still in court because of the differences which appeared on appellant's bank account, lawyer to the respondent, Dr. Byamugisha and M/S Sendege & Co. then appearing for the appellant agreed on alteration of the price paid by James Musinguzi for the convenience of Dr. Byamugisha to Shs.660, 000/= by way of admitted facts by Counsel out of Court and Dr. Byamugisha then won the case on alteration by reconciliation of figures for price paid.*

*It would be wrong for court to accept a sale price in a sale as fixed by reconciliation of figures by lawyers because by the law in the Sale of Goods Act price in public auction is by the fall of the hammer once the hammer falls once. Further more, it would be in*

*the interest of justice to observe section 20 of the Penal Code Statute, appellant having paid into Court the decretal sum due in High Court Civil Suit No. 1399 of 1978 and at the same time suffer eviction and other losses of property relevant to eviction.”*

### **Respondent’s submissions on ground 1**

In her ruling, her worship found that “*This application is res judicata the applicant having been granted earlier an opportunity to file his appeal out of time.*”

The Learned Registrar’s ruling was based on the fact that on 12/1997 when the Court of Appeal granted the appellant leave to extend the period within which to lodge his notice of appeal out of time leading to the filing of **Civil Appeal No.4 of 1998 Charles Mayambala v. Uganda Commercial Bank**, the Court had accordingly considered the question of granting the appellant an extension of time rendering issues in Civil Application No. 84 of 2007 res judicata.

The appellant filed several other incompetent applications on the same subject matter. These include:

- a) Civil Application No. 52 of 1998 for leave to extend time to file Notice of Appeal , filed in the court of appeal and dismissed;
- b) Civil Application No.22 of 2003 to the Supreme Court for leave to extend time to file Notice of Appeal which the appellant withdrew.
- c) Civil Application No.53 of 2005 for extension of time to file Notice of Appeal out of which application is still pending before this Court.

Section 7 of the Civil Procedure Act Cap.71 codifies the doctrine of res judicata;

The Court of Appeal held in the case of **Ssemakula v. Susane Magala & 2 Others (1979) HCB 90** as follows;

*“ The plea of Res judicata is to be found in section 7 of the Civil Procedure Act”, No Court shall try any suit or issue in which matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties in a court competent to try such subsequent suit which in issue has been subsequently raised and has been heard and fully determined.” Once this plea is successfully raised, the suit must be dismissed.*

*The doctrine of res judicata is a fundamental doctrine to the effect that there must be an end to litigation. Accordingly therefore every matter should be tried fairly once and having been so tried, all litigation about it should be concluded forever between the parties.”*

It is the respondent’s submission that the matter in issue in Civil Application No. 84 of 2007 has been the subject of earlier applications as above indicated and is accordingly res judicata. The learned Registrar was thus correct in making a finding in that regard.

Pray dismiss the matter.

### **Court’s opinion on ground 1**

The facts of this matter speak for themselves. Under section 7 of the **Civil Procedure Act [Cap 71]**, the learned Registrar rightly concluded that the matter in issue Civil Application No. 84 of 2007 had been the subject of earlier applications and was accordingly res judicata. I entirely agree with her and have no option but to dismiss the matter forthwith.

I should perhaps point out that I do sympathise with the applicant for mistakenly thinking that litigation could go on indefinitely on one’s own terms.

This disposes of the entire ‘reference’ which stands dismissed.

I so order.

**Dated at Kampala this...23<sup>rd</sup>...day of...May...2011.**

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**A.E.N.MPAGI-BAHIGEINE**  
**DEPUTY CHIEF JUSTICE.**

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