

**CIVIL SUIT NO.942/2015 - DENIS ABITAKANIZA VS MONDAY B ELIAB
(RULING)**

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.942 OF 2015

(MISC APPLICATION NO.956 OF 2015)

(ARISING OUT OF COUNTERCLAIM/ PLAINT)

(CIVIL SUIT NO.017 OF 2014 ENTEBBE CHIEF MAGISTRATES COURT)

DENIS ABITAKENIZA:.....C/CLAIMANT/APPELLANT

VERSUS

MONDAY B. ELIAB:.....PLAINTIFF/RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This appeal challenges the decision of the Deputy Registrar; His Worship Fred Waninda, dismissing the Appellant's counterclaim on the ground that it had no suit number.

The brief background of this appeal is that the Respondent brought **Civil Suit No 017 of 2014** against the Defendant in the Chief Magistrate's Court of Entebbe. The Appellant filed a written statement of defence first but, thereafter, also filed a counterclaim against the Plaintiff/Respondent. The Appellant then requested that the file should be transferred to the High Court on grounds that the counter claim exceeded the pecuniary jurisdiction of the Chief Magistrate's Court. Before the transfer was done, the Plaintiff/Respondent withdrew his suit

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against the Appellant. It is on this ground that the Deputy Registry informed the Appellant that his counter claim could not stand because it had no suit number.

The Appellant now challenges this decision.

The grounds of this appeal are;

1. That the dismissal of Civil Suit No. 942 of 2015 on the grounds that it had no number, was erroneous and unlawful as the same said file was registered in the registry with the said number as Civil Suit No.942 of 2015.
2. That the Suit No Civil. 014 of 2015 was not correct as that was the number of the original suit in Entebbe Chief Magistrates Court and the present suit was a counterclaim arising out of the suit in Entebbe, wherein the Chief Magistrate had no jurisdiction whatsoever as the monetary jurisdiction was over her mandate.
3. That, in the interest of justice, the suit be reinstated as the negligence of the staff at the Registry should not be on the counter claimant who seeks justice from this Honorable Court.
4. That, the counter claimant did pay his dues at the High Court as legal fees and could no way have accessed a Court record to write a numerical thereto.
5. That, it is in the interest of justice according to Article 126(e) that he is entitled to a speedy and fair trial before an impartial tribunal a “mere technicality” of which he had neither control over nor his Counsel as the rules forbid either from entering a suit number but only request a legal fee, presentation thereof and being prudent that the matter was registered, but not the latter or later proceedings to enter a numerical figure on Court record which had blank dash, for the clerk is to fill the number thereof.
6. That, the order for dismissal be set aside and the suit be set down for hearing so that justice prevails.

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When the appeal came up for hearing, the Appellant was represented by learned Counsel Basaza Gloria while the Respondent was self-represented. Both parties made oral submissions before Court.

Counsel for the Appellant submitted that the Appellant had paid Court fees and that it was erroneous for the Deputy Registrar to dismiss his case because as a Deputy registrar, he had no power to dismiss a file before a High Court Judge. She added that the Deputy Registrar as the head of the registry could have ordered the clerk to put a number to enable justice to be made to the Appellant.

Her prayer was that Court should reinstate Civil Suit 2755 of Nakawa and set it down for hearing. Her further submission was that there is no authority for bringing this kind of appeal, but urged Court to rely on its inherent jurisdiction under Section 98 of the Civil Procedure Act.

In reply to this submission, the Respondent submitted that there was no counter claim in the Magistrate's Court since it was filed six months after the written statement of defence. Further, that there is no ruling or order appealed from. He thus urged Court to dismiss the appeal with costs.

In rejoinder, Counsel Basaza Gloria maintained her prayer that the Appellant's case be reinstated and set down for hearing.

Suffice to note that arising from the Appellant's submissions, this appeal is premised on Section 98 Civil Procedure Act. No other law was quoted by the Applicant to cushion the application. To base an appeal on Section 98 of the Civil Procedure Act, offends the laws governing appeals.

This position is re-emphasised in the **Supreme Court** decision of **Baku Raphael vs AG SCCA No. 1 of 2005**, where Court held that *a right of appeal is a creature of statute*. **Odoki C. J.** (as he then was) observed that;

“It is trite law that there is no such a thing as inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law”.

There is no law providing for a right of appeal in cases of this nature. My view, therefore, is that this Court has no appellate jurisdiction to entertain the issues arising from this matter.

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This appeal is therefore incompetent and is dismissed with costs.

I so order.

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JUDGE

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Appellant absent.

Counsel absent.

Respondent present.

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

JUDGE

25/5/2018