

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISC. APPEAL NO.0016 OF 2019**

**1. MURANGWA BRUNO**

**2. NSIBIMANA**

**YORAM:::APPLICANTS**

**VERSUS**

**LUYIMBAAZI**

**JAMES:::RESPONDENT**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Applicant brought his application seeking for an order that;

- i) The Taxation application in LDTA No. 167 of 2018 be set aside,
- ii) The taxation be reinstated and;
- iii) Costs be provided.

The application is titled Misc. Appeal No.16 of 2019, brought under  
Section 98 and O.9 r23 of the Civil Procedure Rules.

The application is premised on a Notice of Motion on grounds that the Applicants did not attend the taxation proceedings since they were attending the burial of a relative and their lawyer; Kalyango Mark was prevented from appearing because he was engaged in the Family Division.

The application is supported by the affidavit of Kalyango Mark. A supplementary affidavit was filed by Mulangwa Bruno.

In their affidavit in reply, the Respondent; Luyimbaazi James rebutted all their averments.

During the hearing, Court granted parties/lawyers schedule with which to file submissions though the Respondent's submissions were out of time.

In his submissions, counsel for the Respondent raised a preliminary objection regarding the competency of this appeal.

Counsel for the Applicant never responded to the preliminary objection since the submissions, to him, were out of time. That notwithstanding, the preliminary objection goes to the root of this matter and was to the extent that the appeal was filed out of time and without leave of Court.

Counsel referred to O.50 r8 Section 79(1) and Section 79(1)b of the Civil Procedure Rules and O.9 r23 of the Civil Procedure Rules and the case of *Wilson Milton were and Anor versus Lawrence Katende; Misc. Appn No.074 of 2020* where a similar matter was dismissed.

I have perused the record and I agree that the appeal is out of time. The same was fixed on 8<sup>th</sup> October 2019, yet dismissal was on 11<sup>th</sup> January 2019.

Under Section 79(1)(b) of the Civil Procedure Rules appeals against the decision of the Deputy Registrar are within 7 (*seven*) days from the date of the decision.

No exceptional circumstances were pleaded. Also though the application is titled; ‘*Misc. Appeal*’, it is brought under a wrong section that is; Section 98 and O.9 r23 of the Civil Procedure Rules which does not deal with appeals from the decisions of a Registrar.

The Applicant should have addressed himself to the preliminary objection, but chose to remain silent since an illegality, once drawn to Courts’ attention overrides all the matters. See *His Eminence Cardinal Wamala Nsubuga versus Makula International (1982) HCB 11.*

I find the appeal violates the law as governs appeals from the Orders/Decree of a Registrar under Section 79(1)(b) of the Civil Procedure Rules.

There being no leave to file the same out of time, it’s found incompetently before me. It’s accordingly dismissed with costs to the Respondents. Even if I were to address the merits still I wouldn’t grant as no sufficient case is shown.

I so order.

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Henry I. Kawesa

**JUDGE**

30/11/2020

30/11/2020:

Shaban Sanywa for the Respondent.

Respondent present.

Mark Kalyango for the Applicants.

Applicants absent.

Mark:

Matter is for Ruling, but we filed a complaint on late filing of rejoinder.

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Henry I. Kawesa

**JUDGE**

30/11/2020.