

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 1565 OF 2022
(ARISING FROM CIVIL SUIT No. 514 of 2017)

1.KASINGIRWA SCOVIA

2. NSHEKANABO ANASTANZIA-----APPLICANTS

V

ELIZABETH KABERA-----RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This is an application seeking an order that Civil Suit No. 514 of 2017 be dismissed on ground that it is barred by law or in the alternative the suit be stayed pending the determination of Civil Appeal No. 11 of 2021 arising from Miscellaneous Application No.1 of 2006 and Civil Suit No. 7 of 2004.

The Application is brought under the provisions of sections 14 and 33 of the Judicature Act, sections 6, 34 and 98 of the Civil Procedure Act, Order 7 rule 11 and Order 52 rule 1 & 2 Civil Procedure Rules.

In its ruling dated 31st March 2021, this court found Civil Suit No. 514 of 2017 was not res judicata to Civil Suit No. 7 of 2004, out of which Civil Appeal No. 11 of 2021 arises.

This application was filed thereafter on the 15th February 2022. The Memorandum of Appeal in issue (Civil Appeal No. 33 of 2006), was only attached to the 1st Applicant's supplementary affidavit in support filed on the 8th November 2022. This is in spite of that fact that the receiving stamp indicates 12th July 2006. It reads; Civil Appeal No. 33

of 2006 (Nakawa) arising from Miscellaneous Application No. 001 of 2006 and Civil Suit No. 2004. Upon transfer to the Land Division, the appeal was given Civil Appeal No. 11 of 2021. Therefore, prima facie, this appeal, if it exists, has been pending undetermined for the last 16 years.

- 5 A Notice of Change of Advocates was filed M/S Zack Olowo Advocates and Solicitors as her new advocates as of the 8th September 2022. Since it was the 1st Applicant who deponed the affidavits in support on her behalf, filed by her former Counsel, it is not clear where her position in this application is maintained.

10 **I am of the firm view that this application is misconceived, in light of this Court's ruling on res judicata dated 31st March 2021 which made a distinction between this suit, Civil Suit No. 514 of 2017 and Civil Suit No. 7 of 2004 out of which Civil Appeal No. 11 of 2021 (formerly Civil Appeal No. 33 of 2006) arises. It is accordingly dismissed with no order as to costs.**

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Olive Kazaarwe Mukwaya

JUDGE

30th March 2023

20 **Delivered by email to Counsel for the Applicants.**