

UGANDA / JUDGMENT

Epaku and Another v Amito (Miscellaneous Application 17 of 2023) [2023] UGHCCD 238 (23 August 2023) [2023] UGHCCD 238

COURT

HC: Civil Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application 17 of 2023

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The Republic of Uganda The High Court of Uganda holden at Soroti Miscellaneous Application 0017 of 2023 (Arising from Miscellaneous Application No. 0014 of 2022) (All arising from Civil Appeal No. 0010 of 2021)

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1. Epaku John
2. Elungura David ::::::::::::::::::::::::::::::

Versus

..... Amito Scovia Rose ::::::::::::::::::::::

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling**1. Background: 20**

This is an application by way of Notice of motion brought under Order 43 rule 16, order 52 rules 1, 2 and 3 of the Civil Procedure Rules for orders that the order court made on 31st October 2022 granting costs in Misc. Application No. 14 of 2022 to the Respondent be set aside, costs be granted to the applicants who were the successful party or in the alternative court orders the costs to abide in the main cause, and that the costs of this application be provided for.

The grounds of this application as set out in the application and the supporting affidavit sworn by the applicants are briefly that the applicants

are the appellants in Civil Appeal No. 0010 of 2021 which was dismissed by 30

this Honourable Court on the 22nd of October 2021 leading the applicants \$5\$ to apply for reinstatement of MA No. 14 of 2022.

This honourable court on 31st October 2022 found merit and allowed the application for reinstatement filed by the applicants but ordered costs to be paid to the respondent and the respondent has since gone ahead to

present and serve the applicants with a bill of costs vide Taxation 10 Application No. 91 of 2022.

The applicants are aggrieved with the order to pay costs to the Respondent and seek court's intervention to set it aside.

The respondent in her affidavit in reply stated that the applicants filed MA

14/2022 for reinstatement was granted with costs to her, however, the 15 applicants have not shown any interest in prosecuting the appeal.

That her lawyers filed a Bill of Costs for taxation on the 27th day February 2022 and to her surprise the applicants filed this application which barred this court from taxing the said bill.

- That the intentions of the applicants are ill, unreasonable and are 20 determined to deny her the fruits of litigation instead of taking reasonable steps in prosecuting their appeal before time runs out and put an end to endless litigation, the applicants are wasting costs time with a lot of applications. She further stated costs follow the event and she was the
- successful party. 25

The 1st applicant in rejoinder stated that the main appeal is due to be heard as a hearing date has been secured. That he challenges the costs because they condemn them to pay the respondent when the application to reinstate the appeal was granted and the appeal has not yet been heard.

That it is in the interest of justice that the main appeal is heard and 30 determined before costs or indeed any execution process is done.

2. Submissions:

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The applicant was represented by IBC Advocates while the respondent was represented by M/s Legal Aid Project of the ULS. Schedules for filing written submissions were given to the parties and the same are on record. The essence of the applicants' submissions is that this court in condemning

the applicants to pay costs was unfair to them yet the application to 10 reinstate the appeal was granted because the applicants had not been served with hearing notices for the various dates the matter came up before it was dismissed.

That this order is unjust to them as they are condemned to pay costs whereas the appeal has not yet been heard and determined, especially 15 where the applicants have demonstrated seriousness in pursuing their appeal.

Counsel further submitted that the applicants were the successful parties in MA 0014/2022 and it is trite law that costs follow the event and court will normally award costs to the successful party.

- That in the absence of special circumstances, costs follow the event and these special circumstances which constitute misconduct on the side of the successful party were not pointed out anywhere in the ruling in MA \$0014/2022.\$
- That the ruling of this honourable court demonstrated that there was no 25 wrongdoing or fault on the part of the applicants leading to the dismissal of their appeal and in the absence of this costs ought to have been awarded to the applicants and not the respondents.

That the ends of justice would be better served if the court directed that each party bear its own costs or the costs abide the outcome of the appeal.

- Counsel for the respondent in reply submitted that the application was \$\mathsf{S}\$ incurably defective and should be struck out with costs, the applicants should have appealed against the said decision to a competent court or exercise other avenues other than seeking court's inherent powers. Counsel without prejudice to this agreed that it is the general rule that in
- absence of special circumstances costs follow the event. Counsel 10 submitted that the conduct of the appellants did not warrant the grant of costs as they filed their appeal and took no steps to prosecute the same and no sufficient evidence was adduced by the applicants to prove that indeed they remained interested in pursuing the appeal to completion.
- 3. Determination. 15

This application seeks that the order granting costs to the respondent in MA 0014/2022 be set aside and costs be granted to the applicant or in the alternative costs be in the cause.

The applicants brought this application under Order 43 rule 16 which provides for readmission of appeal, counsel for the applicants in his 20 submissions stated that the application was brought under section 98 of the Civil Procedure Act invoking this court's inherent powers that the order of costs in MA 0014/2022 be set aside.

The wording of the application underground 'e' and the affidavits in 25 support under paragraphs 9 and 10 indicates that this is an application for review.

The law under which review is provided is Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules.

The grounds for review are clearly provided for and were outlined in *Mubuuke vs UEB* High court Misc. Application No. 98 of 2005.

These are:

1. That there is a mistake manifest or error apparent on the face of the record.
2. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.

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That any other sufficient reason exists.

Counsel for the applicants simply states that the award of costs to the respondent in MA 0014/2022 was unjust to the applicants who were the successful parties in the same.

This application, however, was not brought under the laws for review as 15 seen above and furthermore no argument was advanced on any of the grounds for review. As such I cannot determine it as an application for review.

Furthermore, the applicants are invoking the inherent powers granted under section 98 of the Civil Procedure Act that this court set aside the \$20\$ order it made as to costs in MA 0014/2022.

The applicants are challenging the decision of this Court on costs.

In other words, this court is being asked to sit on appeal in its own ruling and actually change its original order of "costs to the respondent" to the opposite order awarding the costs to the applicants.

I find that this is not provided for by the law and would not be appropriate for the court to sit and change its own order by altering the award of costs in MA 0014/2022 when it is already *functus officio*.*

Such a change can only be made by an appellate court and not through the

invoking of a court's inherent powers since this court at this point in time 30 is now *functus officio**, meaning that I as the judge who having discharged

- my duty and passed the impugned order cannot again rehear the same S matter by reopening it so as to deal with the same matter upon which it has made its decision. My mandate to do so clearly has since expired after making the said orders which was not a mistake on the record.

- That being the case, this application is found to be inappropriate as it calls for this court to exercise its inherent powers incorrectly which would be an \$10\$ abuse of the court powers and processes since the remedy for the applicants lie with an appeal to the Court of Appeal if they are aggrieved with the orders of this Honourable Court.

3. Orders:

Accordingly, this application is found to have no merits and is dismissed 15 with no order as to costs.

I so order.

Hon. Justice Dr Henry Peter Adonyo Judge 23rd August 2023

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Prepared on 13 October 2026 · Esheria