

UGANDA / JUDGMENT

Iriama and Another v Otim and 2 Others
(Civil Miscellaneous Application 156 of
2023) [2024] UGHC 522 (7 May 2024)
[2024] UGHC 522

COURT
High Court of Uganda

BEFORE
Adonyo, J

CASE / FILE NUMBER
Civil Miscellaneous Application 156 of 2023

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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0156 of 2023

(Arising out of Civil Appeal No. 0066 of 2022)

10 1. Iriama Leonard 2. Ariko Saverio **Applicants** Versus 1. Otim Sam 2. Adunget Simon Peter
Respondents 15 3. Omoding Richard

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background: 20

The applicants brought this application by way of notice of motion under sections 64, 98,99 and 100 of the Civil Procedure Act, section 33 of the Judicature Act and Order 52 rule 1, 2 and 3 of the Civil Procedure Rules for orders that the judgement of this honourable court in Civil Appeal No. 0066 of 2022 be corrected under the

Slip Rule so as to specifically provide for payment of costs of the suit in the lower 25 court to the applicants herein and or alternatively preserve all orders made by the lower court and costs of the application be provided for.

2. Grounds:

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The grounds of the application are that on the 20th day of September 2023 this court delivered a judgement in Civil Appeal No. 0066 of 2022, striking off the appeal for being incompetent and by implication maintaining the judgment and orders of the trial court.

- That the appellate judge in dismissing the said appeal made an order of costs of 10 the appeal to be paid by the appellants to respondents thereof but by slip/error omitted to order for costs of the suit in the lower court to be paid by the appellants.
- That the error/slip in the judgment of the Appellate judge with regard to costs in the lower court manifestly defeats the appellate court's intention of preserving 15 the trial court's orders and unless corrected the same constitutes an injustice to the respondents wherein they will be inhibited from claiming for the costs of the suit that had been granted to them by the lower/trial court.
- 3. Reply to Grounds:
- The respondents' in their affidavits in reply stated that the section 99 of the Civil 20 Procedure Act does not apply to this instant application and as such it is incompetent before this court and should be struck out with costs.

That the award of costs is at discretion of court and as such there was no error/slip in the judgement of this honourable court in not granting the Applicant's cost of the lower court.

That Counsel Aloysius Onyait who swore the applicants' affidavit in support was not their advocate in the lower court vide Civil Suit No. 011 of 2020 and as such he is seeking unjust enrichment from a case he did not participate in.

- The applicants were represented by M/s Baobab Advocates and the respondents \$5\$ by M/s Obore & Co. Advocates. Their submissions have been duly considered.
- 4. Determination:

This court has the inherent jurisdiction to recall its judgment in order to give effect to its manifest intention or what clearly would have been the intention of court had some matter not been inadvertently omitted but court will not seat on appeal in its own judgment in the same proceedings.

The applicant must prove that there was a clerical error or an accidental slip or omission which did not give effect to the intention of court when it passed the judgment. (See: Uganda Development Bank Ltd Vs Oil Seeds (U) Ltd SCC Application

15 No. 15 of 1997)

Section 99 of the Civil Procedure Act provides that,

Clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

In this instance Civil Appeal No. 0066 of 2022 from which this application arises 20 was dismissed at the point of preliminary objections for being defective, possessing general grounds and the party's amending of grounds of appeal without leave of court

The appeal was thus found incompetent and was dismissed with the following orders: 25

- This appeal is struck out for being incompetent before this court.
- It is dismissed for having no merits.
- The costs of this appeal are awarded to the respondents.

The appeal having been dismissed it follows that the judgment and orders of the $\$S$ lower court were not altered in any way.

Further the appeal having been found incompetent, it was this court's intention that the judgement and orders of the lower court is upheld.

Accordingly, it was an accidental error for this Honourable Court to not have included in its conclusions and orders that the judgment and orders of the lower 10 court upheld.

That error in so not adding does not in any way vary the judgment and orders of the lower court and is curable cured by virtue of Section 99 of the Civil Procedure Act by adding the full intention of this Honourable Court.

Accordingly, I would find merit in this application and would thus correct the 15 judgment of this Honourable Court in Civil Appeal No. 0066 of 2022 to add an order that the judgement and orders of the lower court are accordingly upheld as part of the original orders of this Honourable Court.

On the argument by counsel for the respondent that Counsel Aloysius Onyait who swore the applicants' affidavit in support was not their advocate in the lower 20 court in Civil Suit No. 011 of 2020 and as such he was seeking unjust enrichment from a case he did not participate in, I find that this argument pedestrian for the issue at hand was not cost for counsel but cost which was originally granted by the lower trial court. Therefore, I would consider this submission not relevant in

terms of the issue which is before this court which is the error apparent on its 25 final orders in Civil Appeal No. 0066 of 2022 which does not in any way stop any person for correctly pointing parties as to the correct decision which this court should have undertaken in the first place. This argument fails.

5. Orders:

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- a) This application is allowed by virtue of Section 99 of the Civil Procedure Act which provides for corrections of error apparent on record by the doctrine of Slip Rule:
- b) The final orders in Civil Appeal No. 0066 of 2022 shall thus therefore read;

- This appeal is struck out for being incompetent before this court. 10
- It is dismissed for having no merits.
- The judgement and orders of the lower court are accordingly upheld.
- The costs of this appeal are awarded to the respondents.
- c) This application is allowed with no orders as to costs.
- I so order. 15

Hon. Justice Dr Henry Peter Adonyo

Judge

7th May 2024

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