

UGANDA / JUDGMENT

Semliki Rift Trading Co. Ltd v ETS. Kamanzi Limited (HCT-01-CV-MA-0035-2025) [2025]

UGHC 525 (14 July 2025)

[2025] UGHC 525

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-CV-MA-0035-2025

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CV-MA-0035-2025 (ARISING OUT OF HCT-01-CV-CS-0060-2024) SEMLIKI
RIFT TRADING CO. LTD ::::::::::::::::::::::::::: APPLICANT VERSUS ETS. KAMANZI
LIMITED ::::::::::::::::::::::::::::::::::::::: RESPONDENT BEFORE: HON. JUSTICE VINCENT
WAGONA

RULING

Introduction:

- 1. The Applicant brought the instant Application by Notice of Motion under Section 37 of the Judicature Act, Cap 16, Section 98 of the Civil Procedure Act, Cap 282, Order 26 Rule 2 (1) and Order 52 Rule 1 and 3 of the Civil Procedure Rules seeking Orders that; -
- (1) Civil suit No. 60 of 2024 [ETS. Kamanzi vs. Semliki Rift Trading Company Limited] be dismissed for failure to furnish security for costs within the prescribed time.
- (2) Costs of the Application be provided for.

Grounds of the Application:

- 2. The Application is supported by the Affidavit of *Mr. Maxime Van Pee*, who is a director in the Applicant Company. The grounds of the Application are that; -

- (1)The Respondent filed **Civil Suit No. 60 of 2024 [ETS. Kamanzi vs. Semliki Rift Trading Company Limited]** seeking an Order for special damages of USD 1,583,373 and Ug. Shs. 200,000/= together with interest of Ug. Shs. 250,000,000/= arising from the Applicant's alleged negligence.
- (2)The Applicant filed a Written Statement of Defence wherein it raised preliminary objections, specifically that; -
 - (a) The suit was instituted in the name of a non-existent entity and is therefore incompetent, void ab initio, and ought to be dismissed with costs;
 - (b)The suit is barred by law as the Plaintiff's claim is founded on its own fraud and illegality in form or false declaration of transit cargo weights and violation of mandatory Uganda laws of vehicular cargo loads v-sa-vis public road usage; and
 - (c) The Plaintiff has no locus standi to pursue compensation on behalf of third parties not pleaded in the suit.
- (3)The Applicant consequently filed Miscellaneous Application No. 111 of 2024, asserting that the Respondent's suit is a sham and lacks merit, and

that the Respondent does not have any known assets within the jurisdiction of this Court that may be resorted to in execution.

- (4)On 25th February 2025, this Court issued an Order in Miscellaneous Application No. 111 of 2024, directing the Respondent to furnish Ug. Shs. 50,000,000/= within one month from the date of the Ruling, as security for the Applicant/Defendant's costs in Civil Suit No. 60 of 2024.
- (5)Notwithstanding receipt of the aforementioned Order, the Respondent has obstinately failed and/or neglected to furnish the required security for costs within the prescribed time.
- (6)It is in the interest of justice that this Application is granted.

Reply by the Respondent:

3. This Application is unopposed as the Respondent never filed an Affidavit in Reply. However, even when the Application is unopposed, the legal evidential burden of proving this case on a balance of probabilities still rests on the Applicant. See **Yoswa Kityo vs. Eria Kaddu HCB 58 and Kabaco Uganda Limited vs. Turyahikayo UGHCCD 316**.

Representation and Hearing:

4. *Mr Joel Israel Kidandaire* appeared for the Applicant while the Respondent was unrepresented. The Applicant's Counsel addressed me by way of written

submissions but also made brief oral submissions when the matter came up for hearing on 10th June 2025. The Respondent was unrepresented.

Applicant's Submissions:

- 5. About service of the instant Application upon the Respondent, learned Counsel for the Applicant submitted that the Respondent was served twice, first through their lawyers who declined service on grounds that they no longer had instructions in the matter. They however gave the Applicant's lawyers a contact of *Kamanzi* who is a director in the Respondent company. When *Kamanzi* was contacted, he said that he no longer works with the Respondent Company. *Kamanzi* instead gave them the Respondent's address and that the Applicant's Lawyer's wrote to them through the said email address to inform them about the hearing of the Application. There is also an affidavit of service on court record to that effect. That the Applicant had earlier argued that the Respondent is a fictitious entity and thus filed an Application for security for costs which was heard and allowed. The Respondent was ordered to pay for security for costs of Ug. Shs. 50,000,000/= payable in a month, but the Respondent has never paid the said security for costs.
- 6. Learned Counsel for the Applicant submitted that Courts of law do not issue orders in vain and that in **Siiko Muzamil vs. Fred Bamwesigye & Ors, Miscellaneous Application No. 387 of 2020**, Court held that Court Orders

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have to be obeyed and to indicate to contemnors that there are consequences for disobedience of court orders. That in **Wandera Asuman & Anor vs. Hajji Mawazi Wandera & 2 Ors, HCCA No. 096 of 2027**, it was held that the Court's power to dismiss the suit under **Order 26 Rule 1 CPR** is automatic upon the Plaintiff's failure to comply with the Order of security for costs. Counsel prayed that Civil Suit No. 60 of 2024 be dismissed with costs for the Plaintiff's failure to furnish security for costs as ordered by this Court.

CONSIDERATION BY COURT:

- 7. I have carefully perused the record of this court and established that, on February 25, 2025, in **Miscellaneous Application No. 111 of 2024**, this Court directed the Respondent, to furnish Ug. Shs. 50,000,000/= as security for the Applicant's costs in Civil Suit No. 60 of 2024. This payment was to be made within one month from the date of the Ruling of the learned Deputy Registrar.

- 8. The Applicant, through the affidavit of *Mr. Maxime Van Pee*, a director in the Applicant Company, asserts that the Respondent has "obstinately failed and/or neglected to furnish the required security for costs within the prescribed time." This assertion remains unopposed, as the Respondent did not file an Affidavit in Reply. While the legal evidential burden still rests on the Applicant, the absence of a response from the Respondent significantly strengthens the Applicant's claim. The order for security for costs was made on February 25,

2025, with a one-month compliance period, which has long since elapsed. There is no evidence before this Court that the Respondent has complied with this order. The Respondent's silence and failure to oppose this Application further indicate their non-compliance.

- 9. The procedure governing the furnishing of security for cost is provided under **Order 26 Rule 1** of the **Civil Procedure Rules** which provides that; *"the court may if it deems fit order a Plaintiff in any suit to give security for payment of all costs incurred by any defendant."* The consequences of the failure to furnish the security for costs as required by the court order is provided for under **Order 26 Rule 2(1) (supra)** which provides that; *"If security is not furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw from the suit."*
- 10. In the case of **Banco Arabe Espanol vs. Bank of Uganda, Supreme Court Civil Application No. 23 of 1999**, the Supreme Court considered the above provisions of the Civil Procedure Rules and held that it is common ground that court's power to dismiss the suit under order 23 r.2 (1) (now 26 Rule 2 (1)) is automatic upon the plaintiff's failure to comply with the order for security for costs; and that court has no alternative but to dismiss the suit in the event of non-compliance with terms of the order of furnishing of security for costs made under **Rule 1(supra)**.

- 11. The Applicant's submissions rightly emphasize that courts of law do not issue orders in vain and that court orders must be obeyed. This principle is well established in case law, as cited by the Applicant's counsel. Furthermore, **Order 26 Rule 2(1) of the Civil Procedure Rules** grants this Court the power to dismiss a suit if the plaintiff fails to furnish security for costs as ordered. The case of **Banco Arabe Espanol vs. Bank of Uganda (supra)**, reinforces that the Court's power to dismiss a suit under **Order 26 Rule 1 CPR** (which is analogous to **Rule 2**) is automatic upon the plaintiff's failure to comply with an order for security for costs.
- 12. It is a fundamental aspect of the administration of justice that parties comply with court orders. Failure to do so undermines the authority of the court and prejudices the party in whose favor the order was made, especially concerning securing costs.

Conclusion and Final Orders:

13. For the reasons stated above, this Court finds that the Respondent, *ETS. Kamanzi Limited*, has failed to comply with the Order issued on February 25, 2025, in Miscellaneous Application No. 111 of 2024, to furnish security for costs within the prescribed time. Therefore, the prayers in the Notice of Motion are granted as follows; -

- (1)**Civil Suit No. 60 of 2024 [ETS: Kamanzi Limited vs. Semliki Rift Trading Company Limited] is hereby dismissed with costs for failure to furnish security for costs within the prescribed time.**
- (2)**Costs of this Application shall be provided for and borne by the Respondent, ETS. Kamanzi Limited.**

Dated at Fort Portal this 1st day of July 2025

Vincent Wagona

High Court Judge

FORTPORTAL

Ruling delivered on 14th July 2025.

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Prepared on 14 October 2026 · Esheria