

UGANDA / JUDGMENT

Sentongo v Kiyimba & Another (Miscellaneous Application 2 of 2023) [2023] UGHC 397 (30 June 2023) [2023] UGHC 397

COURT
High Court of Uganda

BEFORE
Katamba Nkwanga, J

CASE / FILE NUMBER
Miscellaneous Application 2 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 002 OF 2023

(ARISING FROM CIVIL SUIT NO. 53 OF 2016)

GODFREY SENTONGO APPLICANT/PLAINTIFF

(Administrator of the estate of the Late Ruth Namyalo Nalongo)

VERSUS

1. KIYIMBA JOSEPH

2. MASAKA MUNICIPAL COUNCIL (MMC) RESPONDENTS/DEENDANTS

RULING

Hon. Lady Justice Victoria N. N. Katamba

BACKGROUND

This Application arises from a backlog suit that was instituted over seven years ago in 2016 by the Applicant. The objective of litigation should in as much as possible be geared towards disposal of this suit that has been on the record of this court for a long time now.

When the main suit came up for hearing on 3rd November 2020, counsel for the Respondents raised a preliminary objection that has since been overruled by this court and the court omitted to make an express order as to costs. The Applicant is aggrieved that whereas he was the successful party, he was not awarded costs. He even filed a bill costs which was summarily dismissed by the learned Deputy Registrar of this court.

The Applicant has also cited a few typing errors in the ruling which he believes this court should rectify along with making an express order as to whether the Respondents are liable to pay costs for his efforts at successfully defending against the preliminary objection.

Representation

The Applicant was unrepresented

The 1st Respondent was represented by M/s Solis Advocates.

The 2 nd Respondent was on the other hand represented by M/s Attorney General's Chambers

Applicant's Submissions

ISSUES

- 1. *Whether or not a successful party is entitled to costs unless the court or Judge for good reasons otherwise orders, If so, whether the learned Deputy Registrar's dismissal Order of the Plaintiff's party and party bill of costs in Taxation Application No.51 of 2022 should be set aside and Taxation Application No. 51 of 2022 reinstated.*
- 2. *Whether the second paragraph on page 4 of the Ruling is both contradictory to, and inconsistent with the reasoning in the rest of the ruling.*
- 3. *Whether or not, an application supported or opposed by a false affidavit is competent in a proceeding in court of law?*

Issue 1:

The Applicant submitted that unless expressly denied by court, the successful party is always entitled to costs.

The Applicant cited **Section 27 (1) (2)** of the Civil Procedure Act which provides thus; -

Costs:

- (1). **"Subject to such conditions and limitations as may be prescribed, and to the provisions of the law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have power to determine by whom and out of what property and what extent those costs are to be paid, and to give all necessary directions for the purpose aforesaid."**
- (2). **"The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or**

"other matter or issue shall follow the event unless the court or judge shall for good reasons otherwise order." (Underlining was added for emphasis)

The Applicant supported his submission further with the authority of **Rwantale V. Rwabutoga [1988 – 1990] H. C. B 100**, in which Hon. Mukanza Ag. J. HELD: **"..... Costs of any action cause or other matter or issue follow the event unless the court or Judge for good reasons otherwise orders."**

In conclusion, the Applicant submitted that in the objection that was raised by the 1 st Defendant, the Plaintiff was the successful party but the trial Judge omitted to pronounce herself on costs, and no reason was given.

Issue 2;

The Plaintiff submitted that an error exists on the face of the record in the second paragraph on **page 4** of the **Ruling** which reads thus;

"I state therefore, that with due respect to the Plaintiff, Section 272 of the Succession Act does not allow an administrator to exercise duties on behalf of all other administrators who have taken out a grant of letters of administration"

The Applicant submits that the cited statement above is both contradictory to, and inconsistent with, the reasoning and conclusions in the rest of the **Ruling** as presented in the last part of page 3 up to page 5 of the **Ruling** which bears the learned trial Judge's signature. The Applicant reasons that the cited words, or statement, was an **inadvertent error** which ought to be clarified.

The Applicant adds that the Application was brought pursuant to **Section 82 (b), 99 and 100 of the C. P. A.**, and **Order 46 Rules 1, 2, 4, and 8** of the C. P. R provides as follows; -

1. Sections 82(b) of the C. P. A.

Any person considering himself or herself aggrieved -

(a)"by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or"

- (b) "by a decree or order from which no appeal is allowed by this Act, may apply for a review of the judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit."* (Underlining was added for emphasis)
- **2. Amendment of judgments, decrees or orders: Section 99 of the CPA.** "Clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from accidental slip or omissions may at any time be corrected by the court either of its own motion or on the application of any of the parties."*
- **3. Amendment of judgments, decrees or orders: Sections 100 of the CPA.** "The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceedings in a suit: and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceedings."*
- **4. Application for review of judgment: Order 46 Rules 1, 2, 4, & 8 of the C. P. R.**
- (1). Any person considering himself or herself aggrieved
- *(a)* "by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or"
- *(b) by a decree or order from which no appeal is hereby allowed,*

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain review of the decree or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order."

(2). To whom application for review may be made.

"An application for a review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed."* (Underling was added for emphasis)

(4). Application for review to be to same judges.

"Where the judge or judges, or any one of the judges, who passed the decree or made the order, a review which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, the judge or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the application."* (Underling was added for emphasis)

In conclusion of this **Issue, No. 2**, Applicant submitted that there is good reason to correct the cited error in the second paragraph on page 4 of the **Ruling** on the preliminary objection as it is both contradictory to, and inconsistent with, the reasoning and conclusions in the rest of the **Ruling**.

Issue 3;

The Applicant submitted that the 1st Respondent's affidavit contained a falsehood that goes to the root of the Application when he stated in paragraph 7 that the impugned error cited by the Applicant was not an error apparent on the face of the record of court.

The Applicant cited the authority of **Nathan Katamba v. Stephen Kabigyema HCCS No. 42 / 98 reported in [2000] KALR 780 at 781, in which it was held that**

"*an affidavit is a serious document and where part of it contains some falsehood then the rest becomes suspect..... An application supported by a false affidavit is bound to fail. The motion remains unsupported by any affidavit and would be dismissed".*

In conclusion the Applicant prayed that this court resolves the ground in the negative and refer the 1st Respondent's counsel to Law council for professional misconduct.

1 st Respondents' Submissions

The Respondent submitted that as stated in his paragraphs 7, 8 and 9 of the Affidavit in reply, what is cited by the Applicant as an obvious, inadvertent typing error on the face of the record is not an error at all and it is not inconsistent or contradictory with the reasoning and conclusion in the rest of the ruling.

That the applicant failed to comprehend that this Honorable Court stated the correct interpretation of Section 272 of the Succession Act to the effect that the said section does not allow an administrator to exercise duties on behalf of all other administrators who have taken out a grant of Administration.

The 1st Respondent further submitted that the Applicant also failed to comprehend that Court held that he had the right to bring Civil Suit No. 053 of 2016 despite being one of the Administrators who took out letters of Administration. That this finding was based on other reasons stated in the ruling by Court, other than the fact that Section 272 allowed him to act on behalf of the other administrators.

The Respondent also submitted that the correct procedure that the Appellant ought to have adopted was to appeal against the decision of the learned Deputy Registrar for dismissing his bill of costs instead of applying for review.

Lastly, the Respondent submitted that the Applicant was guilty of dilatory conduct for having delayed to bring this application. She supported her submission with the authority of *Masaka District Administration C. A. C. A No. 64 of 2000*,* in which the Court of Appeal held that Court will invoke its inherent powers not to entertain a matter or dismiss it for want of prosecution where; a) There was inordinate delay; b) The delay was inexcusable, c) Even when credible excuse was made out; the defendant is likely to be seriously prejudiced by the delay and d) The balance of justice demands it.

In conclusion, the 1st Respondent prayed for the dismissal of the Application.

2nd Respondents Submissions

On issue 1;

The 2nd Respondent submitted that as expressly stated under **Section 27 (1) of the Civil Procedure Act Cap 71**, the costs of all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid.

The 2nd Respondent supported his submissions with the case of **Devram Nanji Dattani Vs Haridas Kalidas Dawda (1949) 16 E. A. C. A 35** where the Court upheld and followed a passage from the judgment of Lord Atkinson in the case of **Donald Campbell Vs Pollak [1927] A. C 732** wherein it was stated as follows;

"*It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the judge who tried his case, that discretion is a judicial discretion and if it be so its exercise must be based on facts. If, however, there be, in fact, some grounds to support the exercise by the trial judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide and the Court of Appeal will not interfere with his discretion in that instance."* emphasis is mine.

In respect to the order for reinstatement of the Applicant's dismissed bill of costs, the 2nd Respondent submitted that the order sought cannot be sought in an application for review such as the instant one because the taxation was not heard by this court yet review is a function of the trial court under S.82 of the CPA and Order 46 Rules 1(1) and 2 of the Civil Procedure Rules.

The 2nd Respondent further submitted that the Applicant should have instead appealed against the decision of the Learned Deputy Registrar dismissing his bill of costs under **Order 50 Rule 8 of the Civil Procedure Rules SI 71-1, which provides the procedure for the same.**

In conclusion, the 2nd Respondent submitted that the application, does not have any merit, it is a disguised appeal and it does not disclose a mistake or error apparent on the face of the record to justify a review of this Honorable Court's decision to warrant the grant of the orders / prayers sought by the Applicant herein.

***Determination by Court*.**

I have read and critically analyzed the pleadings and submissions of the parties in this matter whose details are on the record of this court and below is my decision.

Whether or not a successful party is entitled to costs unless the court or Judge for good reasons otherwise orders, If so, whether the learned Deputy Registrar's Dismissal Order of the Plaintiff's party and party bill of costs in Taxation Application No.51 of 2022 should be set aside and Taxation Application No. 51 of 2022 reinstated?

S. 27(1) of the CPA provides that the award of costs is discretionary. Exercise of discretion entitles the Judicial officer to employ a judicious determination on as to whether in the circumstances of a particular scenario, costs should be awarded to the Successful party.

S.27(2) of the CPA empowers court to award costs in deserving cases and also seems to impose a duty on the court to give a reason/s where costs are not awarded. The courts have taken trouble to make an interpretation of the rule and the position adopted is that an award of costs is discretionary. ***See Devram Nanji Dattani Vs Haridas Kalidas Dawda (1949) 16 E. A. C. A 35***

In the instant case, court exercised its discretion not to award costs but omitted the otherwise good practice of stating the reason for the denial. The reason is that the objection was simple in nature and court did not find it necessary to impose costs on the party that raised the objection/1st Respondent.

The Learned Deputy Registrar's dismissal order of the Plaintiff's party to party bill of costs will not be set aside because the Ruling as earlier stated had not provided for costs. Filing and presentation of the bill of costs was premature because it had no supporting order.

Secondly this is an application for review not an appeal against the dismissal order of the learned Deputy Registrar. Thirdly, the application for review is not before the Learned Deputy Registrar that issued the dismissal order yet applications for review are heard by the Judicial officer that made the impugned order.

I also agree with the 2nd Respondent's submissions that the Application for review for costs was erroneously brought against him when she was not a party to the impugned objection from which the instant application emanates.

In conclusion, this ground is rejected and answered in the negative.

1. Whether the second paragraph on page 4 of the Ruling is both contradictory to, and inconsistent with the reasoning in the rest of the ruling.

I agree with the Applicant that the impugned paragraph is contradictory to the findings of the court on the preliminary objection. Under S.272 of the Succession Act as amended, an Administrator who has taken out Letters of Administration or probate as the case may be, may act in representative capacity of other administrators. Hastily I add, that the exception is in cases of execution of conveyances as was stated in the Supreme court decision of **Silver Byaruhanga vs.**

Fr. Emmanuel Ruvugwaho & Anor SCCA No. 09 of 2014

This court however does not think that correction of this clerical typo necessitated the filing of the instant application because the Applicant has not sufficiently demonstrated how that clerical error in the Ruling has occasioned a miscarriage of Justice to him.

2. Whether or not, an application supported or opposed by a false affidavit is competent in a proceeding in court of law?

I agree with the Applicant that the 1st Respondent's affidavit contained the assertion that the court did not intend to mean that a joint administrator of an estate may undertake acts on behalf of others and the estate. I however find that this was a question of interpretation not a deliberate averment intended to mislead the court. Secondly, the impugned paragraph 7 may be severed without necessarily disregarding the entire affidavit. **See Rtd Col Dr. Kizza Besigye Vs. Yoweri Kaguta Museveni Supreme court Election Petition No. 1 of 2006**

This issue is answered in the negative.

In conclusion, the application partly succeeds in so far as the interpretation of Section 272 of the Succession Act as amended goes. Since both parties have partly succeeded, the costs of this application are awarded to the party who will succeed in the main cause.

I so order.

1. The Application partly succeeds
2. The costs for this Application are awarded to the party that will succeed in the main cause.

HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA

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CASE PAGE	https://chat.esheria.ai/case-law/uganda/sentongo-v-kiyimba-miscellaneous-application-2-of-2023-2023-ughc-397-30-june-2023-and-others-unknown-topic-unknown-court-2023

9 / 9