

UGANDA / JUDGMENT

Zikulabe v Mwanja (Civil Appeal 165 of 2022) [2024] UGHC 1024 (18 October 2024)

[2024] UGHC 1024

COURT

High Court of Uganda

BEFORE

Batema, J

CASE / FILE NUMBER

Civil Appeal 165 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT IGANGA CIVIL
APPEAL NO. 165 OF 2022 (ARISING FROM MISC. APP NO. 042 OF 2022) (FURTHER
ARISING FROM CIVIL SUIT NO. 18 OF 2022) ZIKULABE
STEVEN:..... 10

VERSUS

<table>

MWANJA MUHAMED :.....

BEFORE: HON. MR. JUSTICE BATEMA N. D. A, JUDGE

IUDGEMENT

Introduction

This is an appeal against the ruling and orders of His Worship Ndiwalana Yunus, Magistrate Grade 1 sitting at the Chief Magistrate's Court of Iganga. The trial Magistrate allowed the application dismissing Civil Suit No. 18 of 2022 but made no order as to costs.

Brief Background 20

The learned trial Magistrate declined to award costs to the successful Appellant ".....in order to avoid aggravation of the sower relationship between the two adversaries before court" hence this appeal.

Grounds of Appeal

1. That the learned trial Magistrate erred in law and fact by declining to award costs of the Application and the Main suit to the Applicant/ Defendant thereby occasioning a miscarriage of Justice.

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2. That the learned trial Magistrate erred in law and fact by declining to award costs to the Applicant/ Defendant based on erroneous/ unknown principles at law thereby occasioning a miscarriage of justice.

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Duty of this Court

As a first appellate court, this court is duty bound to re-evaluate all the evidence that was actually adduced before the learned trial Magistrate and make its own inferences, bearing in mind that it did not have benefit of seeing, hearing and observing the demeanor of the witnesses. (See Begumisa v. Tibebaga, S. C. C. A No.

17 of 2002).

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where there was misdirection to the law or fact or an error by the lower court that goes to the root of the matter and occasions a miscarriage of justice. (See Kifamunte Henry v. Uganda S. C. C. A No. 10/1997).

Resolution of Court

The Appellant in his submissions argued one ground of appeal namely;

That the learned trial Magistrate erred in law and fact when he declined to award costs of the suit and application to the Applicant?

Counsel for the Appellant submitted that the learned trial Magistrate at page 4 of his ruling gave no legal reason for non-grant of costs to the appellant other than relying on unknown principles in law by holding that "..... no orders to costs to avoid aggravation of the sower relationship between the two adversaries before court". Counsel for the Appellant while relying on the case of Candiru Alice v. Amandua Fenisto & Anor, Civil Suit No. 19 of 2014, which held that courts should not depart from the norm set under Section 27 of the CPA on costs following the event unless for good cause, argued that at no point in the ruling did the trial Magistrate find the appellant to have been guilty of any fault leading to litigation to

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justify his non-award of costs. Counsel for the Appellant finally submitted that the legal discretion as available to judicial officers while deciding on award or none award of costs is bound by the rules and principles of law and not arbitrary, capricious or unrestrained as per Black's Law Dictionary 5th Edition.

On the other hand, Mwanja Muhamed, the Respondent did not file written submissions. The Respondent interestingly filed a letter dated 19/7/2024 in response to the Appellant's submissions claiming that he was not aware of the appeal since no memorandum of appeal was ever served on him. He further alleged that he had been critically ill and bedridden and thus unable to move.

Before I delve into the merits of this appeal, I am persuaded to first address the concerns raised in this so-called letter. I have revisited and perused the record of court, and it is untrue that Mwanja Muhammed was not aware of this appeal. There is an affidavit of service filed on 30/9/2022 by Wabwire Emma, a process server of C/o M/s Ssekaana Associated Advocates & Consultants to the effect that on 23/9/2022, the Respondent's lawyers then of M/s Isabirye & Co. Advocates were duly served with a copy of the Memorandum of Appeal and the law firm acknowledged receipt of service on behalf of the Respondent by signing and stamping on the received copy. Therefore to the extent that service on an agent is deemed proper service on the principle, this court is inclined to believe that the Respondent simply chose not to appear and respond to this appeal within the meaning of the law for his known reasons.

Turning to the merits of this appeal, Section 27 (2) of the Civil Procedure Act provides;

"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 reason otherwise order. (Underlined for emphasis)".

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In the instant case, the learned trial Magistrate at page 4 of his ruling had this to say;

".....no orders to costs to avoid aggravation of the sower relationship between the two adversaries before this court"

The principle of law is that the successful party will be entitled to costs. The exception to this rule is that there must be good reason to justify denial of costs. A good reason is one that promotes family unity or business relations. In this case avoiding aggravation of the sour relationship between two adversaries in court is not a good reason. Animosity between adversaries who are not family members or business partners is expected. They are already adversaries. In such cases mediation has already failed in all semi-autonomous fields. Each party comes to court with a "Winner takes it all" attitude. In such cases, costs must be awarded to atone for the animosity and frustration of mediation. It cannot therefore be good reason for denying costs.

This Appeal is allowed. The Appellant is awarded costs in Civil Suit No. 18 of 2022 and Misc. Application No. 042 of 2022 arising therefrom and this appeal.

Order

Let the successful Appellant file his Bills of Costs in the lower court for taxation.

I so order

100 BATEMA N. D. A **IUDGE** 18/10/2024

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