THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT-00-CC-MA-0634-2007
(Arising from High Court C.S. No. 730 of 2007)

1. HILTON HIGH SCHOOL LIMITED
2. PAUL WADEGA
3. MRS CATE WADEGA :::::::::::: APPLICANTS/DEFENDANTS

VERSUS

MATOYA MARORIA :::::::::::::::::: RESPONDENT/PLAINTIFF

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

R U L I N G:

When this application came up for hearing on 29/10/2007, Mr. Bogere Jeff Mukhwana representing the applicants/defendants intimated to Court that he was withdrawing the application because, in his own words: *"It has been overtaken by events in that the decretal sum has been paid in full."*

Mr. Madrama for the respondent/plaintiff indicated that he would not object as long as the applicants met the respondent's costs incurred in pursuit of the claim for the principal sum. Mr. Bogere's prayer is that Court exercises its inherent jurisdiction to order that each party bears it own costs. Given that the decretal sum, the subject matter in HCCS No. 730/2007, was paid before hearing in the suit commenced, I directed the parties to address me on the issue of costs. Hence this ruling.

The facts herein are not complex. The respondent herein, Matoya Maroria, sued the applicants herein on a dishonoured cheque. He claimed a sum of Shs.20, 000,000= from the applicants in a summary suit. The applicants then applied for leave to appear and defend. But during the pendancy of the application, the applicants paid to the respondent the whole sum. This was the basis for the applicants'

belief that the payment *"wholly extinguished the respondent's claim in the main suit."* I don't hesitate to say that he applicants got it wrong. I will give my reasons.

The suit in question was filed here on 31/8/2007. Therein the plaintiff sought to recover a sum of Shs.20, 000,000= and the costs of the suit.

From the records, the applicants/defendants issued to the respondent/plaintiff a cheque dated 15/6/2007 for Shs.20, 000,000=. The cheque was banked on 9/7/2007 and two days later it was returned to the respondent unpaid. It had, so to say, bounced. Following the dishonour, the respondent (through his lawyers M/S Katende, Sempebwa & Co. Advocates) issued to the applicants/defendants a demand notice/notice of intention to sue. The demand was that the applicants pay a sum of Shs.20, 000,000= together with damages of Shs.1, 500,000= and the lawyers' fees of Shs.1, 387,000= within seven days from the date of the notice (13/7/2007) or else face a civil action. The applicants did not heed the notice. Through their lawyers, M/S Ndozireho & Co. Advocates, the applicants, in a letter dated 23/7/2007, sought not to dispute the indebtedness but to explain how it had come about. The lawyers sought the indulgence of their colleagues to allow the parties to resolve the matter amicably interparties, and in the event of failure of the anticipated understanding to be at liberty to seek recourse from the Courts of law. The respondent's lawyers shot back to say that they would not pursue the Court action as long as the applicants acknowledged to them the sums due and the period within which they would pay the same. The letter was written to the applicants' lawyers on 26/7/2007. In a letter dated 6th August 2007, the applicants through their lawyers did acknowledge to the respondent the fact of indebtedness to him in a sum of Shs.20,000,000=. The only problem with this communication is that instead of the lawyers saying that *"Our clients acknowledge indebtedness as they hereby do to yours in the sum of Shs.20, 000,000="*, they wrote "*your clients acknowledge indebtedness ……..…."*

Anyway the applicants sought leave to pay the amount due within a period of <u>three</u> months. As expected, the lawyers for the respondent shot back again denying their clients' purported acknowledgement of indebtedness to the applicants. However they proposed that the amount be paid in a period of one month. This in effect means that the applicants' proposal of paying the debt in a period of 3 months was rejected. They said in that letter of 07 August 2007 that the one month would be reckoned from the time the fact of dishonour of the cheque was brought to their attention, i.e. 13/07/2007. The lawyers continued:

> ***"Secondly, our client only agrees to the full amount together with costs demanded in our letter dated 13th July, 2007. In the circumstances we expect***

payment by Thursday 16th of August 2007 or will file a civil action without further notice."

From the records, it is evident that when the applicants failed to pay by Thursday 16/8/2007 or at all, the respondent filed the suit on 31/8/2007. I have already detailed out herein the respondent's prayers in the main suit: payment of Shs.20m and costs of the suit.

I have also already stated that on seeing the suit papers, the applicants filed the instant application seeking leave to defend. Given that they have opted to withdraw the application, it is not prudent that I express any opinion as to whether or not the same stood to succeed. Be that at it may, the application was filed on 12/09/2007 and on 26/09/2007 the applicants themselves wrote to the respondent as follows:

"MR. MATOYA MARORIA
RE: CIVIL SUITE** (sic) **NO. 730 OF 2007
We hereby forward the sum of Ug. Shs.20, 000,000= (Twenty millions only) in settlement of the above suite** (sic)**. The payment of the costs incurred shall be cleared by 08th October 2007.

Sgd
……
Paul Wadega (Mr.)

Sgd
…….
Cate Wadega (Mrs)"

It is on the basis of this payment that the application has been withdrawn.

It is in my view settled law that with regard to costs, the usual result is that the loser pays the winner's costs. This practice is however subject to the Court's discretion so that a winning party may not necessarily be awarded his costs. See: **Uganda Development Bank –Vs- Muganga Construction Company Ltd [1981] HCB 35.**

The discretion is for the Court. However, the discretion under Section 27 (1) of the Civil Procedure Act must be exercised judicially. The usual result is that a successful party should be awarded costs

unless the Judge for good reason orders otherwise. In the instant case, howsoever the indebtedness arose, it is not disputed that the applicants issued a cheque to the respondent. It is also not disputed that on presentation, the cheque bounced.

Notice of dishonour was given to the applicants but they still did not pay. They asked for three months reprieve, the respondent rejected it and proposed to them one month from 13/7/2007. They did not respond to that proposal. When the period proposed to them expired without action, the respondent went ahead and filed the suit. He sought recovery of the principal amount and costs. They made an attempt to dispute the claim but later, without even going through their lawyers, they wrote back to the respondent acknowledging the indebtedness, paying it off, and promising to pay the costs incurred by the respondent by 8/10/2007. They have not fulfilled their side of the bargain. In these circumstances, it cannot be true, as Mr. Bogere appears to suggest, that the payment of Shs.20m wholly extinguished the respondent's claim in the main suit. It partly did. Having said so, I have considered the facts of the case. They (the facts) do not present any peculiarity that would warrant this Court to deny the respondent an order for costs both in the main suit and in the instant application, especially so given that the applicants themselves have so undertaken, to the respondent, in their letter of 26/09/2007.

Accordingly, for the reason advanced by learned counsel for the applicant, this application stands withdrawn. The applicants shall pay to the respondent costs attendant to the withdrawal.

For the avoidance of the doubt, judgment is entered for the plaintiff against the defendants, jointly and severally, in the main suit. In keeping with the principle that costs follow the event, the plaintiff shall also have the costs of the suit.

Given that the plaintiff acknowledges receipt of the principal sum in the main suit (that is, Shs.20, 000,000=), he will present to Court his Bill of costs, herein and in the main suit, for taxation and settlement as by law established.

Orders accordingly.

Yorokamu Bamwine
J U D G E
16/11/2007