

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

**HCCS NO 220 OF 2009**

**FINCA (U) LTD (MDI) .....PLAINTIFF**

**VERSUS**

**UGANDA REVENUE AUTHORITY}..... DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA**

**RULING**

This ruling is on the question of costs. Gloria Twinomugisha for the defendant, holding brief for Habib Arike applied for adjournment on behalf of Counsel Enoch Barata counsel for the plaintiff. The parties had settled the suit on the 7<sup>th</sup> of July 2011 when the matter came for mention and were supposed to address the court on the question of costs only which question they were unable to agree upon. The suit was adjourned to today the 14<sup>th</sup> of July 2011 at 9.30 am.

Gloria Tunomugisha appeared alone and court was notified that counsel Enoch Barata was in another court. I stood the matter over until 11.30. At 11.30 counsel informed court that Barata had adjourned his matter in the other court to 11.30 as well.

I refused the adjournment on the ground that the plaintiff was supposed to address court on the question on costs only today the 14<sup>th</sup> of July 2011 when the matter was fixed for hearing. It was fixed for hearing by the parties when they appeared for mention on the 7<sup>th</sup> July 2011 on which date they had settled the suit and judgment was entered save for the question of costs which was left for determination of the court.

I am not inclined to adjourn this matter again for the reason that no proper reason has been given for adjournment as counsel was in court when the hearing date was fixed. Exercising my discretion under order 17 rule 4 of the Civil Procedure Rules, I decided to proceed to determine the question of costs.

At the last hearing the defendants counsel submitted that **Uganda shillings 219,000,000/=** had been collected by the defendant after it had issued an assessment in this matter the basis of the plaintiff's suit. Thereafter the parties agreed that the remainder of the claim for taxes namely the defendants assessment of the plaintiff to stamp duty in the sum of **Uganda shillings 81,343,505/=** be vacated and I entered judgment accordingly. In other words what is left is for the court to exercise its discretion under section 27 of the Civil Procedure Act to

determine the question of costs of the suit. I therefore do not have to wait for the submission of the parties to exercise my discretion.

The defendant's assessment of the plaintiff as averred in the plaint was for payment of taxes worth **Uganda shillings 518,347,764/=**. The plaintiff sought declaration that the assessment was unlawful. This was denied by the defendant who averred that it was lawful. It later transpired that out of this assessment **Uganda shillings 219,000,000/=** was paid to the defendant by the plaintiff and after reconciliation of the actual figures payable by the plaintiff it was agreed before court that the sum of **Uganda shillings 81,342,505/=** which remained due on the assessment be vacated. I entered judgment accordingly and it was further agreed that the court will determine the question of costs.

In the circumstances since the suit was settled on the main point in controversy by the parties and yet it cannot be said that the assessment lacked merit, it is the order of this court that each party shall bear its own costs of the suit.

Ruling delivered in court the 14<sup>th</sup> day of July 2011.

Hon. Mr. Justice Christopher Madrama

Ruling delivered in the presence of

Gloria Twinomugisha for the Defendant

In the absence of Enoch Barata for the plaintiff

Ojambo Makoha Court Clerk,

Patricia Akanyo Court Recording Clerk,

Hon. Mr. Justice Christopher Madrama

14<sup>th</sup> July 2011.