

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO.28 OF 2015**

**UGANDA TELECOM LTD .....APPELLANT**

**VERSUS**

**WARID TELECOM (UGANDA) LIMITED.....RESPONDENT**

**BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:**

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**RULING:**

**1. Background:**

This was an appeal from the decision of the registrar in which the Appellant is aggrieved with the ruling made in High Court Miscellaneous Application No. 493 of 2015 filed on 26<sup>th</sup> June 2015 which the Applicant deposes was done within seven working days was ruled to be without urgency with the Deputy Registrar then ordering the Appellant pays costs the same. The Appellant thus seeks for orders to have the said decision set aside and that costs of this appeal be provided for.

**2. Grounds for the appeal:**

The grounds of this appeal are stated in the appeal document itself and further expounded by affidavit deposed in its support by one Kibuuka Rashid. Briefly, though they are that the Registrar erred in law and fact for the learned registrar did not exercise his judicial discretion judiciously when he proceeded to hold that High Court Miscellaneous Application No 493 of 2015 filed within seven days from the ruling of this court by the Hon. Lady Justice Flavia Senoga Anglin in High Court Miscellaneous Application No. 477 of 2014 was without urgency for the learned registrar ignored and failed to follow judicial precedents applicable in the

circumstances of the case by failing to consider the essential grounds which are necessary and required by law for the grant of interim reliefs and or orders. Thus that being the case , the Appellant was aggrieved and sought for the reversal of the decision of the learned registrar.

On the other hand the respondent in its affidavit in reply states that this appeal is overtaken by events and if it were to be allowed would be moot for the substantive application out of which it arose has since been withdrawn by the very appellant and therefore should be dismissed with costs at the very preliminary.

### **3. Preliminary objection:**

Upon the above contention this appeal was thus set for hearing on the 10<sup>th</sup> day of November, 2015. On that day Mr. Alex Rezida appeared for the Respondent while Mr. Rashid Kibuuka appeared for the Appellant. Before the hearing of the appeal could ensue Mr. Alex Rezida raised a preliminary point of law which according to him would dispose off the whole appeal without its going into any further hearing in that while this appeal was seeking to reverse the orders of the learned Registrar of this court in High Court Miscellaneous Application No. 493 of 2015 which originally was for interim stay of proceedings pending the hearing and disposal of High Court Miscellaneous Application No. 492 out of which it arose with High Court Miscellaneous Application No. 492 of 2015 itself arising out of High Court Miscellaneous Application No. 490 of 2015 which was an application for leave for appeal itself having arose from High Court Miscellaneous Application No.477 of 2014 which was an application for leave to appear and defend but that High Court Miscellaneous Application No.492 of 2015 out of which the interim application before the registrar arose had itself been withdrawn on the 23<sup>rd</sup> day September 2015 before learned Hon. Justice Flavia Anglin with costs in it awarded to the Respondent. In addition it was submitted that incidentally High Court Miscellaneous Application No. 490 of 2015 out of which High Court Miscellaneous Applications No 492 and 493 arose was heard interparties by Hon. Justice Flavia Anglin and dismissed on 20<sup>th</sup> October 2015 with even High Court Miscellaneous Application No. 477 of 2014 having been heard and disposed off by the same judge on the 18<sup>th</sup> day of June 2015. Learned counsel for the respondent therefore stated that for this honourable Court to proceed to an appeal to reverse a decision arising out of original applications which have since been disposed off would be an exercise in futility for it would render the whole proceedings not only moot but purely academic in nature resulting in the waste

of the court's time for main applications from which it arose has since been handled in line with the holding in the case of **Martin Kamanzi versus Uganda Wild Life Authority**. Further, Mr. Rezida submitted that as the decision of the learned registrar is not is not a decision of a judge on record and therefore not binding then it follows that this appeal should suffer the consequence of being struck out with costs as a result as it is of no consequence.

Mr. Kibuuka for the appellant in reply to this preliminary objection stated that the instant appeal as shown by the affidavit in rejoinder seeks to set aside the award of costs to the respondent with its purpose of it not being for stay of any proceedings or for any interim relief but that the orders of the learned registrar that applicant pays costs in High Court Miscellaneous Application Miscellaneous Application No.493 of 2015 be set aside and thus the issue which is of consideration is whether the appeal is properly before the court and whether in dismissing High Court Miscellaneous Application Miscellaneous Application No. 493 of 2015 the learned registrar properly exercised his discretion judiciously and when he condemned the appellant to the costs in that application.

Mr. Kibuuka further alluded to the fact that even if there had been the act of withdrawal of the application from which this appeal arose as well as the dismissal by the trial court of the application for leave to appeal, it was still within the appellant's rights to challenge the registrar's ruling in High Court Miscellaneous Application 493 of 2015 as an appeal is the only remedy available to the aggrieved appellant as is provided by **Order 50 Rule 8 of The Civil Procedure Rules** for it connotes has a live dispute in regards to the consequential order to pay costs which arose out of the dismissed application for an interim order and therefore this court should inspite the non existence of the substantive application still had the duty to investigate and thereafter make findings in regards to the decision of the registrar to have the appellant suffer costs in the dismissed application and therefore this appeal was in order.

To rejoin this contention Mr. Rezida stated that even if this appeal is by way of notice of motion, it does not affect the issue of its being moot for the key thing which this court has to consider is what would happen to the order already granted by the registrar if it is reversed for it cannot be made in isolation and left hanging as there is no application for stay of proceedings as such with the issue of costs being a consequence of a dismissed matter which ought to not be resurrected for High Court Miscellaneous Application No. 492 of 2015 has since been

withdrawn with costs to the respondent with even the costs of High Court Miscellaneous Application No. 493 of 2015 suffering that consequence thus ending up being moot as High Court Miscellaneous Application No. 477 of 2014 which was for leave to defend a summary suit had already been dealt with and as the record shows since judgment was entered in High Court Civil suit No.372 of 2014 with costs then the same should follow the event. To support this contention Mr. Rezida relied on the case of **Human Rights Network for Journalists & another versus Uganda Communications Commission & Others Miscellaneous Cause No. 219 of 2013** in which Justice Yasin Nyanzi of this court while considering the mootness of a matter in court considered extensively a number of decisions and ended up concluding that courts do not hear matters which are moot for that would be in abuse of the court process and would be of no consequence. Arising from that holding and considering that the effect of this appeal had already been dealt with Mr. Rezida proceeded to reiterate his prayers that this appeal be dismissed at this preliminary point with costs for it was moot.

#### **4. Resolution:**

I have carefully considered the arguments presented in relations to this and I have similarly perused the totality of the court record in relations to this matter and my finding is that all the applications referred to by learned counsel for the respondent have indeed been concluded, one way or the other. Indeed the fact is that High Court Miscellaneous Application No. 490 of 2015, which was for leave to appeal, was dismissed by Hon. Justice Flavia Anglin Senoga on the 20<sup>th</sup> day of October 2015, High Court Miscellaneous Application No.492 of 2015, which was the main application from which High Court Miscellaneous Application No.493 arose itself had been withdrawn on the 9<sup>th</sup> day of September 2015. Similarly High Court Miscellaneous Application No. 477 of 2015 which was an application for unconditional leave to appear and defend High Cour Civil Suit No. 372 of 2014 has itself been concluded by Hon. Justice Flavia Anglin Senoga on the 18<sup>th</sup> day of June 2015.

To note, however, is High Court Miscellaneous Application No.492 of 2015 which was the main application for stay of proceedings in which the application for interim stay arose and thus gave rise to instant appeal. It has been argued by Mr. Kibuuka Rashid for the appellants that the instant application is not for the grant of any interim order but is an appeal against the decision of the registrar in High court Miscellaneous Application No. 493 of 2015 in which he dismissed the

same and condemned the appellant to costs with this appeal questioning his exercise of his discretion whether it was done judiciously.

My perusal of the record contained in High Court Miscellaneous Application No 493 of 2015 shows that it was for interim stay with its intention to stay proceedings the pending the hearing and determination of High Court Miscellaneous Application No. 492 of 2015 which was withdrawn on 9<sup>th</sup> day of September 2015 thus in his wisdom, the registrar when considering the application before him found it fit to dismiss the application and award costs to the respondent.

The question which comes to the mind of this court is thus what would the effect of this court, on considering the appeal, to subsequently make a finding that the decision of the learned registrar was erroneously made yet there no pending main application from which it arose is subsisting as the same was withdrawn with costs to the respondent.

My considered opinion in this regards is that indeed all the applications precedent to this matter have been handled with appropriate orders made thus that being the direction which this appeal would take is already determined for very competent decisions regarding all the matters precedent to it has been appropriately handled with the issue of costs which this appeal seems to be grounded provided for.

That being the case, I would consider and agree with learned counsel for the respondent that this appeal is indeed moot and is merely academic as this was the point belaboured upon by my learned brother Musota Stephen J when confronted by similar situation in the matter of **An Application For Judicial Review Between Julius Maganda v National Resistance Movement High Court High Court Miscellaneous Application No.154 of 2010** with the learned judge having this to say;

**“Courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or merely no longer exist”.**

This position was confirmed by the Court of Appeal in the case of **Human Rights Network for Journalist and Another v Uganda Communications Commission & Others Miscellaneous Cause No. 219 of 2013**.

Therefore with the above considerations related to the instant matter, it would appear clear to this court that the instant appellant is engaged in an exercise in futility for it is evident that the main causes from which the instant appeal arise are no longer in existence and that the rights of the parties have since been determined. Thus I would consider and find that if that is so then this appeal is misadvised and indeed a waste of the courts times for it the issue of costs has already been resolved by the very main applications from which the decision in the stated Miscellaneous Application is contended.

Therefore if all the issues regarding costs have been done away with then it only behooves a prudent litigant to contend with the consequences of those various holding in relations to a matter which was itself in the interim and thus would merely seek the interpretation of the full import of the various holdings other than to appeal.

That being the case I find that to pursue an appeal on matters which have since lost its backbone would in my view be an exercise in futility and thus merely academic and would add no value to the jurisprudence of the courts and would be of consequence since issue of costs which this instant appeal is grounded has already been competently resolved. That being so, it is therefore the view of this court that this appeal as it were is a waste of the court's time for its effect has already been dealt with and therefore the preliminary objection raised by the respondent is of substance and would consequently be upheld meaning that this appeal thus would stand dismissed with costs to the respondent at this preliminary stages for it was brought in court in a vain attempt to have the court to undo what has already been competently resolved with the best option of the appellant would have been to seek appropriate interpretation of the holding of the court in the various matters already resolved than to appeal.

#### **5. Orders:**

Having found that this appeal is incompetent, this court doth dismiss it with costs to the respondent in the preliminary.

I do so order accordingly.

**HENRY PETER ADONYO**

**JUDGE**

**13<sup>TH</sup> NOVEMBER, 2015**