

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 2376 OF 2023
(ARISING FROM CIVIL SUIT NO. 0822 OF 2022)

**1. UGANDA N'EDDAGALA LYAYO THE NATIONAL TRADITIONAL HEALERS AND
HERBALISTS ASSOCIATION LTD**

2. WARYABIRA KARIM SSALONGO APPLICANTS

VERSUS

1. SAAZI MARVINS

2. AKULILAWO WILSON KYEYA

3. KIBUUKA FRANCIS

4. BATWAWULA ISSA KEEZI RESPONDENTS

**T/A UGANDA N'EDDAGALA LYAYO THE NATIONAL HEALERS AND HERBALISTS
ASSOCIATION**

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

The Applicants brought this application by notice of motion under **Sections 27(1)** and **98** of the **Civil Procedure Act Cap 71** seeking for orders that:

1. The Applicants be granted costs following the abatement of Civil Suit No. 0822 of 2022.
2. Costs of this application be provided for.

Briefly, the grounds of this application are that:

1. On 26th September 2022, the Respondents filed Civil Suit No. 0822 of 2022 ("the main suit") alleging trademark infringement against the Applicants.
2. On 31st October 2022, the Applicants filed a written statement of defence and a counterclaim in the main suit.
3. On 15th November 2022, the Respondents replied to the counterclaim.

4. The Respondents failed to take out summons for directions as required by Order 11A rule 1(2) of the Civil Procedure (Amendment) Rules, 2019.
5. Accordingly, this Honourable Court abated the main suit.
6. This application is made seeking an order as to the costs in the main suit.
7. It is in the interest of justice that this application is allowed.

The application is supported by an affidavit affirmed by the 2nd Applicant who is also the leader of the 1st Applicant. He stated that, on 26th September 2022, the Respondents filed the main suit alleging trademark infringement against the Applicants. On 31st October 2022, the Applicants filed their defence denying the allegations and counterclaiming for the ownership of the trademark. On 15th November 2022, the Respondents filed a reply to the counterclaim, denying the allegations therein. Thereafter, the Respondents failed to take out summons for directions as required by law and this Court, accordingly, abated the main suit without awarding costs to the Applicants.

The Respondents filed an affidavit in reply opposing the application through Mr. Kavuma Isa, one of their advocates. Mr. Kavuma confirmed that the Court did not issue any order for costs after dismissing the main suit. He stated that costs are awarded at the discretion of the Court. He added that, since this application is not one for review, the Applicants are not entitled to any alteration in the order dismissing the main suit. He concluded that this Court is now functus officio as far as the order dismissing the main suit is concerned.

Issue arising

Whether the Applicant should be awarded costs in Civil Suit No. 0822 of 2022.

Representation and hearing

At the hearing, the Applicants were represented by Tumukunde & Co. Advocates while the Respondents were represented by Luzige, Lubega, Kavuma & Co. Advocates. Counsel filed written submissions to argue the application. I have considered those submissions, the laws and authorities cited therein and all other materials on record while deciding this application.

Determination of the issue

Whether the Applicant should be awarded costs in Civil Suit No. 0822 of 2022.

Section 27(1) of the Civil Procedure Act Cap 71 provides that:

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any 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 full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.” Emphasis mine.

The general rule is that costs follow the event. This means that an award of costs will, generally, flow with the event, that is to say, the result of the litigation. A successful party is entitled to costs of the suit, unless the Court, for good reason, orders otherwise. (See **Kwizera Eddie v Attorney General, SC Const. Appeal No. 01 of 2008**). The unsuccessful party will usually be required to pay the successful party's costs of the proceedings and courts will only depart from this rule if some special circumstances are shown to exist. (See **Candiru Alice v Amandua Festo & 2 Ors, HCCS No. 19 of 2014.**)

Since the successful party is usually entitled to costs, the Court must have good justification for denying him or her costs. For that reason, the unsuccessful party seeking to be absolved of liability to pay the successful party's costs bears the burden of proving special circumstances which relieve him of that liability. He or she has to persuade the court that the particular facts and circumstances before it warrant the issuance of an order absolving him or her of liability to pay the successful party's costs. (See **Candiru Alice v Amandua Festo & 2 Ors (supra)**).

In the instant application, the Applicants were the successful parties in the main suit and, ordinarily, they should be allowed to recover the costs they expended to fight off the suit. Whether or not the Applicants should be awarded the costs of the main suit depends on whether or not there are special circumstances justifying the denial of costs. These special circumstances depend on the facts of each individual case and could include misconduct in the course of the litigation by the successful party or any other legal impediment.

Counsel for the Respondents raised a legal impediment that could restrain Court from awarding the costs of the main suit to the Applicants. They argued that the Court is now functus officio on the main suit after the same was abated without an order for costs. As a general rule, as soon as judgment is pronounced by a

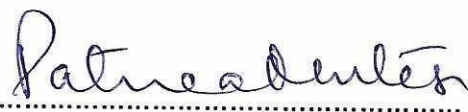
court, the court becomes functus officio and ceases to have any more control over the case. The court will, for that reason, have no more power to override, alter or interfere with that judgment. (See **Major (Rtd) Roland Kakooza Mutale v Balisigara Stephen; CA Consolidated Civil Applications Nos. 121 and 277 of 2020**). The functus officio doctrine dictates that, once a judicial officer has made a decision, he or she is deemed to have exhausted his or her powers and he or she cannot act again on the same matter. (See **Egwedi Basil v Eroku James, HC Civil Application No. 28 of 2012**).

Without an appeal or an application to review, revise or otherwise set aside its decision as prescribed in law, a court is bound by the functus officio doctrine not to interfere with that decision. The Court's 24th May 2023 order finally disposed of the main suit. The present application neither constitutes an appeal, nor an application to review, revise or otherwise set aside that order. This application instead seeks to amend that order so that costs are awarded to the Applicants.

It is my considered decision that this application does not disclose any grounds for altering the said order because it does not constitute any of the known post-judgment courses of action through which a Court can revisit, reconsider and alter its judgment. The Applicants ought to have specifically sought the review of the Court's order of 24th May 2023 within the bounds of the prescribed law for this Court to revisit and reconsider the same on the issue of costs or on any other issue.

Consequently, I make the following orders:

- i. This application is hereby dismissed.
- ii. Each party shall bear its own costs.



Patricia Mutesi

JUDGE

(30/05/2024)