

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CS – 087 – 2007

KITGUM TAXI OWNER & DRIVERS

ASSOCIATION:.....PLAINTIFF

VERSUS

1. **RICHARD ANYWAR**
2. **OTTO PETER ANKON**
3. **OBITA SAM**
4. **ODONGTOO OSMAN**
5. **OCAYA CHURCHILL:.....DEFENDANTS**

BEFORE: HIS LORDS JUSTICE REMMY K. KASULE

RULING

The plaintiff, an organization of Taxi owners and drivers in Kitgum District, sued the defendants, its members, for various reliefs arising out of the defendants' management of the plaintiff in various capacities during the years 2003 to 2006. The defendants filed a defence to the suit. Both plaintiff and defendants were represented by legal counsel in the suit.

On 21st August 2008, when the suit came up for hearing, the plaintiff, through their learned counsel, Pius Olaka, withdrew the suit against the defendants. The defendants, also through their learned counsel, Gilbert Nuwagaba, did not object to the withdraw of the suit, but insisted that the defendants be awarded the costs of the withdrawn suit. Plaintiff's counsel prayed that each party meets its own costs.

The issue to be resolved by court is who is to be awarded the costs of the withdrawn suit.

The general rule is that costs shall follow the event and a successful party should not be deprived of costs except for good cause. See section 27 of the Civil Procedure Act. In effect a successful party in a cause is entitled to costs unless that party is guilty of misconduct or there is other good cause for not awarding costs to that party.

In determining good cause, court considers the conduct of the parties in actual litigation and also matters which led to the litigation. The discretion of the court has to be exercised judiciously, and on the right principles, and reasons for the decision ought to be given: **See Francis Butagira V. Deborah Namukasa: (1992 – 1993) H.C.B. 98; a supreme court of Uganda decision: see also D.N. DATTANI VS H.K. DAWDA (1949) EACA 35, and MULTIHOLDINGS Ltd v UGANDA COMMERCIAL BANK (1973) E.A. 28**

In the case under consideration, court notes that the defendants are members of the plaintiff organization and according to the written statement of defence, they are the lawful executive of the plaintiff.

It would appear that at the time the suit was instituted, there was another group of members, who too, asserted they were the executive of the plaintiff. Therefore the fact that the suit was brought in the names of the plaintiff, and not in the individual names of any one, means that an order for costs, for or against the plaintiff will, have to be satisfied by whoever is the legitimate executive of the plaintiff. Such executive could as well be that constituted by the defendants. In such an event, in practical terms, the costs will be for and at the same time against the defendants as the executive of the plaintiff.

Court also notes from the pleadings in the suit that there were serious issues for resolution as regards the internal management of the plaintiff, of which the defendants are part and parcel thereof, as members, and also, according to their assertion in the written statement of defence, as executive. It cannot be said therefore that the institution of the suit, let alone the filing of the defence, was an act of misconduct on the part of the plaintiff as an organization, or the defendants as those being sued.

Bearing in mind the Law and the facts of the case and the conduct as well as the relationship of the parties to the suit, court, in the exercise of its discretion, orders that each party does bear its own costs of the withdrawn suit. It is so ordered.

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Remmy K. Kasule

Judge

30th January, 2009