

determination of the appeal; that there is no legal justification for the court to retain the money.

The application was filed here on 11/03/2010. The affidavit of service of Michael Amu dated 9th April, 2010 shows that M/s Birungyi, Barata & Co. Advocates were served on 15/03/2010. The lawyers did not file any reply and they did not even appear at the hearing on 12/04/2010. In a bid to find out why the respondents and/or their lawyers would fail to turn up in connection with a case that involves such a hefty sum of money, I directed that **HCCA No. 61 of 2009** also be put before me to rule out the possibility of this court issuing contradictory orders on the same matter.

It was not produced. What was produced instead is **Misc. Application No. 624 of 2009** also arising from **HCCA No. 61 of 2009** said to have been filed in High Court on 10/11/2009 though the Notice of Motion itself is dated 10/12/09 and it shows that it was lodged in the Registry on 14/12/2009. It was fixed for hearing on 17/12/2009 but the record is silent as to what happened come that date.

Be that as it may, the matter appeared before my senior colleague, Hon. Mr. Justice Musoke Kibuuka, on 03/02/2010, the lawyers addressed him and in a ruling made pronto ordered the Notice of Appeal filed by the respondents on 30/10/2009 struck out on account of the same having been filed in a wrong court. In his judgment, it should have been filed in the Industrial Court. He promised to write a detailed ruling for the record in addition to that order. It would appear that no such detailed ruling has been delivered to-date. In the mean time, the applicants filed yet another application, the instant one, which has been placed before me for determination.

I'm unable to allow it for the simple reason that the prayers herein are the same as those in **Misc. Application No. 624 of 2009** which to me is partly determined. I say so because the same applicants made three prayers in **HCMA No. 624 of 2009**:

- a). The notice of appeal filed in **HCCA No. 61 of 2009** be struck out.

- b). The Labour Officer's award deposited with the court be paid to the applicants.
- c). Costs of this application be paid by the respondents.

From the records, the learned Trial Judge disposed of (a) above. The Notice of Appeal filed in **HCCA No. 61 of 2009** was struck out. He promised to write a detailed short ruling for the record in addition to the order he made, which he is yet to do. In my humble judgment, whether the labour officer's award deposited with the court ought to be paid to the applicants; and whether costs are payable by the respondents, are all matters incidental to and/or consequent upon the learned Judge's order striking out the Notice of appeal filed in **HCCA No. 61 of 2009**. They are reliefs sought in that application. Assuming that the two reliefs were inadvertently not mentioned before him, they can still be raised before him for purposes of addressing them in the pending detailed ruling on the matter since they were pleaded. It was therefore unnecessary and in my view an abuse of the process of the court to file yet another application on similar terms as the earlier one and cause it to be put before another Judge. Section 20 (2) of the Judicature Act is very clear that proceedings in any action subsequent to the final judgment or order shall, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place.

For this reason alone, I would reject this application.

In case I am wrong, which I doubt, I would observe that despite my request for **HCCA No. 61 of 2009**, it has not been placed before me. On record herein, however, my attention has been drawn to a Notice of Change of Advocates dated 9th April 2010 filed in court on the same date. It is addressed to M/s Birungyi, Barata & Associates and M/s KGN Advocates. It shows that two firms of lawyers, M/s H M Onoria Advocates & Solicitors and M/s M B Gimara Advocates, shall henceforth be the lawyers for the appellants in **HCCA No. 61 of 2009** (respondents herein) as well as related applications arising therein. By necessary implication, by the time the matter came up for hearing on 12/04/2010, learned counsel for the applicants (M/s KGN Advocates) knew or had cause to believe that the former lawyers of the respondents who had been served for the hearing

of the matter on 12/04/2010 no longer had instructions to handle it on behalf of the respondents.

Hence their absence. No evidence of service on the respondents' new lawyers is on record.

In all these circumstances, it would appear to me that all odds are against the success of this application. Court cannot ignore the above irregularities and proceed to order that the suit funds be paid to the applicants when the same issue awaits determination in an earlier application and the respondents stand to be condemned unheard.

For the reasons stated above, I would reject this application and order it struck out on account of being an abuse of the process of court.

The applicants shall be at liberty to pursue the reliefs sought in *HCMA No. 624 of 2009*, if not as substantive reliefs before a detailed ruling is delivered, as consequential orders arising there from.

Orders accordingly.

Applicants shall bear their own costs herein.

Yorokamu Bamwine

JUDGE

16/04/2010

Order:

The Deputy Registrar shall deliver this ruling in my absence.

Yorokamu Bamwine

JUDGE

16/04/2010