

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

MISC. CIVIL REVISION CASE NO.OF 2011

(From Rukungiri Chief Magistrates Court, Civil Suit No. 0052 of 2002)

IRENE KOMWANGI:.....APPLICANT

VERSUS

BUDENSIO KYARIMPA :..... RESPONDENT

BEFORE HON. MR. JUSTICE J.W. KWESIGA

REVISIONAL ORDER

This Revision is being made pursuant to a letter of Reference by His Worship John Eudes Keitirima, Ag. Chief Magistrate, as he then was made as far back as 12th March, 2003. The record shows that the letter and file were received by the High Court Registry at Mbarara for purposes of placing before the High Court Judge for revision, as far back as 13th March, 2003. There was nothing on record to explain why it has taken a whole (8) eight years for this file to come before a judge, hopefully the illegal decree, the subject of this revision has not been executed.

The plaintiff/Respondent filed Civil Suit No. 0052 of 2002, as the next of kin of Ainomugisha Babra for injuries arising from Rukungiri Criminal case No. 428/2001, arising from Assault of the named minor and the Defendant/Applicant had been convicted by a Grade II Court.

The Plaintiff in the Civil Suit above was seeking General damages, special damages of 222,000/= plus costs of the suit. The parties appeared before His Worship Bahikayo Pascal Grade I Magistrate several times until 17th December, 2002 when he gave the case the last adjournment for taxation. On 6th January, 2003 the proceedings show the following record.

“RULING 16/1/2003: Court to tax costs in absence of the Defendant. Costs accordingly taxed. Special damages not awarded as proof thereof is wanting. General damages also not awarded as the taxation of costs has taken this into account.”

The court file has a Decree in this original suit showing that both claims of General and Special damages were dismissed. At the same time it states that Judgment was entered for the Plaintiff. That taxed costs would take care of the General damages which were not proved. On the record, there is a very interesting document called the plaintiff's taxed Bill of costs allowing a total of 302,400/= dated 16th January, 2002.

Examination of the record reveals the following interesting matters:-

1. The proceedings that gave rise to the document called a decree were on the 16th day of January, 2003, the date appearing on the decree.

Strangely the Bill of costs were taxed and allowed on 16th January, 2002.

2. Whereas the suit was filed on 19th August, 2002 the taxed and allowed items ranging from 1st October, 2001 up to 29th October, 2002 before the suit was filed. Out of these listed items under the Bill of costs 7 items are of events that took place 2001 before the suit was filed. These include expenses on witnesses and yet under this suit no single witness ever testified or was recorded as present.
3. There was no Judgment entered for the plaintiff as far as can be gathered from the brief proceedings. The decree is not based on any judgment at all. Be that as it may, the contents of the decree show no substance capable of being called a Judgment. The plaintiffs' claim was for General and Special damages which were dismissed or disallowed. The moment the whole cause of action is not proved there can not be Judgment in favour of the party that alleges the cause of action. In the whole proceedings there was nothing thoughtfully decided and I agree with his Worship Mr. Keitirima's view that this was a kangaroo court's proceedings. A Judgment must be a careful, thoughtful decision made in observance of the known procedural rules which this one does not qualify to be and can not be allowed to stand. Costs can not be awarded for expenses outside the suit and to

an unsuccessful litigant. The long established principle is that a successful litigant ought to be fairly reimbursed for the costs he or she has incurred. See court of Appeal decision in **PREM-CHAND REICHAND LTD AND ANOTHER VS QUARRY SERVICES OF EAST AFRICA & ANOTHER (1972) EA 162.**

Although the decision on who to award costs is a discretion of the Judge or Magistrate presiding over the case, the practice is that the losing party pays the winning party costs of the case. The discretion must be judiciously used and it does not include reversing the practice, it can only be used to direct that each party meets his or her costs or the successful party be awarded discounted costs where it would serve ends of justice.

It is observed that the parties to this case were unrepresented and it was the duty of the learned Magistrate to ensure that he adopted procedures that were not grossly irregular or illegal. None of the parties to this case has raised a complaint, but the irregularities were brought up by the Chief Magistrate under whose jurisdiction the irregularities were committed by the Magistrate Grade One. The guiding principle applicable was settled in the case of **Makula International Ltd. Vs His Eminence Cardinal Nsubuga and another (1982) HCB.** That “*A court of law can not sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleadings.....*”

It is illegal to have an extracted decree from none-existent judgment. It is illegal to award costs to a party whose suit has been wholly dismissed. It is illegal to award costs to a suit when the costs do not arise from the proceedings of the case. It is also a wrong decisions that awarded of costs would take care of the disallowed or un proven general damages. Costs arise from expenses incurred in pursuit of the case in question and they are different of general or special damages which must be proved before the issue of costs is addressed.

For the reasons given herein above, the Decree and the Orders of the Magistrate Grade One are hereby set a side for the reasons of the illegality of the decree or orders and the gross irregularity of the proceedings from which they were extracted.

Dated at Kabale this 29th day of March, 2011.

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J.W. KWESIGA

JUDGE