

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. APPLICATION NO. 046 OF 2020
(ARISING FROM HCT – 01 – CV – LD – CA - -43 OF 2014)
5 **(ARISING FROM FPT- 008 – CV – CS – LD – 105 OF 2012)**
KABASEKE STEPHEN :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. THE MANAGEMENT COMMITTEE OF NGANGI PRIMARY SCHOOL**
- 10 **2. REV. MUCUNGUZI RUBBANI ISAIAH ::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE VINCENT WAGONA

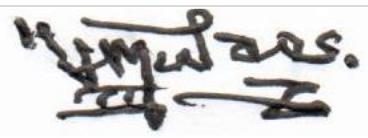
RULING

The applicant commenced this application under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and order 52 rule 1 & 3 of the Civil Procedure
15 Rules for orders that:

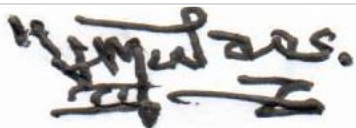
- 1. Consequential orders be made in HCT – 01 – CV – LD – CA – 0043 of 2014 and FPT – 008 – CV – CS – LD – 1-5 OF 2013 against the Respondents to pay costs of the application and the said suits.**
- 2. That the costs of taking out the application be provided to the applicant.**

20 The grounds in support of the application are contained in the affidavit of the applicant who averred as follows:

- 1. That the 2nd Respondent as the Chairperson of the 1st Respondent instituted Civil Suit No. 105 of 2012 against the applicant seeking an order of eviction, a permanent injunction, damages and costs of the suit.



2. That on 21st August 2014, His Worship Opio James delivered judgment in his favor. That the 2nd Respondent as Chairperson of the 1st Respondent was not satisfied with the decision of the Magistrate Grade one at Kyegegwa and lodged Civil Appeal No. 043 of 2014 in this court.
- 5 3. That during hearing of the appeal, he raised a point of law that the appellant *Chairperson Management Committee of Ngangi Primary School* had no locus to institute the appeal since it was not an entity in law.
4. That the trial judge, Hon. Justice Oyuko Anthony Ojok upheld the point of law and dismissed the appeal with costs.
- 10 5. That he filed a bill of costs which was taxed and allowed at shs 3,634,000/= and when he applied for execution, the Assistant Registrar guided that he should apply for consequential orders to determine the person to pay costs.
6. That the Respondents herein participated in litigation in the lower court and the appeal and as such they should pay costs.
- 15 The application was opposed by the 1st Respondent through the affidavit of Mr. Kyamanywa Painento, the Chairperson Management Committee of Ngangi Primary School who contended as follows:
 1. That whereas judgment was delivered in favour of the applicant by His Worship Opio James, the 1st Respondent was not a party to the said suit.
 - 20 2. That the judgment that the applicant is relying on to claim costs was not passed against the 1st Respondent and as such cannot be executed against the 1st Respondent.
 3. That the current application was brought against the 1st Respondent as a wrong party and as such should be dismissed with costs.



Representation:

Mr. Bwiruka Richard appeared for the applicant while Ms. Racheal Atumanyise from the Attorney Generals’ Chambers appeared for the 1st Respondent. A schedule to file submissions was issued and both counsel complied.

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Issues:

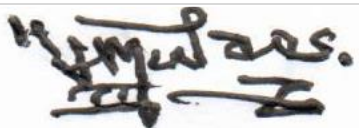
- 1. Whether this is a proper application for grant of consequential orders.**
- 2. Remedies.**

10 **Legal Arguments:**

Mr. Bwiruka submitted that the proceedings in Civil Appeal No. 43 of 2014 and Civil Suit No. 105 of 2012 were commenced against the applicant on behalf of the Respondents who should pay costs. He invoked Section 33 of the Judicature Act and argued that the same grants court inherent powers to make such orders to prevent injustice. That the applicant incurred costs in prosecution of land Civil Appeal No. 43 of 2014 and Civil Suit No. 105 of 2012 which the Respondents should be ordered to pay.

20 In reply it was contended for the 1st Respondent that she was not a party to the proceedings in land Civil Appeal No. 43 of 2014 and Civil Suit No. 105 of 2012 as such she cannot be ordered to pay costs. That the 1st respondent never authorized the filing of the said suits as such recovering costs from the 1st respondent is untenable. She thus asked court to have the application dismissed since it was filed wrongly against the 1st Respondent.

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In rejoinder Mr. Bwiruka insisted that in the course of proceedings in Civil Appeal No. 44 of 2014 and Civil Suit No. 105 of 2012, the 1st Respondent made correspondences to show that it had sued the applicant and referred court to annexure A5 and A6 to the affidavit in support of the motion. He argued that Section 33 of the
5 Judicature Act grants court powers to make consequential orders to prevent injustice.

That during the course of litigation, the applicant incurred costs and in the appeal, court dismissed the same with costs which the Respondents should pay. He thus prayed that the consequential orders be issued.

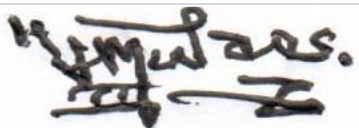
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CONSIDERATION BY COURT:

A consequential order is meant to give effect to an existing court decision or order. In **Kalibala Vicent and 561 others Vs. Attorney General, Misc. Application No. 70 of 2015** arising from **HCCS No. 123 of 2019** (by the Hon. Justice Stephen Musota) at page 4 defined the term “consequential order” to denote an order of court
15 giving effect to the judgment or decision to which it is consequential or resultant there from. Such an order is normally directly traceable to or flowing from the judgment or decision duly prayed for or granted by court.

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The term “*consequential*” is derived from the word “*consequent*” an adjective which means following an effect, result or outcome. It therefore follows, that consequential orders are granted flowing from a judgment or ruling of court which is the result or outcome. Thus an application for consequential orders cannot be

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brought as a standalone application but should naturally arise from the decision of court.

In my considered view an application for consequential orders must meet among others the following:

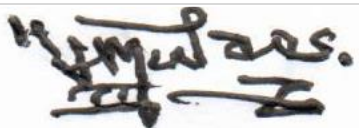
5 *(i) there is a judgment or ruling handed down by a competent court or tribunal which determined the matter on merits to finality.*

(ii) that the parties to the main suit who are bound or affected by the judgment or ruling of court are the same parties in an application for consequential orders.

10 *(iii) that the orders the applicant seeks must have a connection or bearing on the orders or remedies granted in the judgment or ruling from where the application arises.*

15 *(iv) the application must be heard by the court that made and or passed the judgment or ruling from where the application for consequential orders arises.*

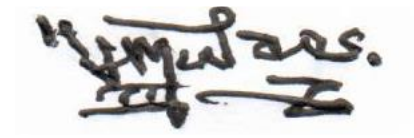
In an application for consequential orders, Court is meant to give effect to the judgment and orders as already given between the same parties. In **Kalibala Vicent and 561 others Vs. Attorney General** (supra) court further observed that
20 consequential orders are applied for where the court hands out a judgment but the implementation of the judgment is impossible except with further orders of court. I should add that the implementation of the judgment should be between the same parties.

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In this case the applicant filed an application seeking consequential orders against persons who were not parties to the suits, both in the civil suit before the lower court and the appeal in this court. In the civil suit as well as in the appeal, the parties were; *“Chairperson School Management Committee of Ngangi Primary school v Kabaseke Stephen”*. The plaintiff in the said suit and the appeal is different from the 1st Respondent since the Court on appeal confirmed that the same is non-existent.

Since the parties in the former suits are different from the ones in the current application and never participated in the proceedings in Civil Suit No. 105 of 2012 and Civil Appeal No. 86 of 2014 as parties I cannot by way of consequential orders order them to pay costs. I decline to do so.

I therefore find that this is not a proper case for grant of consequential orders and the same is dismissed with no orders as to costs. It is so ordered.



Vincent Wagona
High Court Judge
FORTPORTAL

DATE: 13/11/2023

