

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT JINJA

HCT-03-CV-ML-003-2023

(ARISING FROM MISC.APPLICATION No.76 of 2023)

(ARISING FROM CIVIL SUIT NO.081 OF 2022)

SURYAKANT MANIBHAI PATEL:.....APPELLANT

VERSUS

1. GUME FRED NGOBI

2. YEKO CHARLES:.....RESPONDENTS

Appeal

Held: Civil Appeal No. 003 of 2023 is dismissed for failure to comply with Court Orders and for failure to obtain leave to enlarge time and for lacking merit; and the Ruling and Orders of the learned Deputy Registrar in Miscellaneous Application No. 76 of 2023 are hereby upheld with an addition that they should be complied with in 10 days of reading this Judgement.

The costs of this Appeal both in the High Court and the Court below are awarded to the Respondents.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

JUDGEMENT ON APPEAL

The Appellant being dissatisfied and aggrieved by the Ruling of His Worship Waninda Fred K.B, the Deputy Registrar of Jinja, delivered on the 3rd of May 2023, appealed to this Honorable Court against the whole Ruling on the following grounds: -

1. That the Learned Registrar in **Miscellaneous Application No.76 of 2023** that the Applicant deposits Ug.Shs.140,000,000 in court as security for cost as within 30 days from the date of the decision be set aside.
2. That the Ruling of the Learned Registrar in **Miscellaneous Application No.76 of 2023** that the Applicant provides proof of settlement of all costs in **Jinja HCCS No.154 of 2014** within 10 days from the decision be set aside.

3. Costs of the Application be provided for.

The grounds upon which this Appeal is based are that:-

- a) That the learned Registrar erred in in law and fact when he ruled that the Applicant deposits UG Shillings 140,000,000/= as security for costs within 30 days from the date of the Ruling without properly considering the law on security for costs.
- b) That the learned Registrar erred in in law and fact when he ruled that the Applicant provides proof of settlement of all costs in Jinja **HCCS No. 154 of 2014** within 10 days from the date of this decision.
- c) That the learned Registrar erred in in law and fact when he failed to properly analyze the pleadings on record thus coming to a wrong decision.
- d) That it is in the interest of justice that this appeal is allowed.

The above stated grounds are expounded upon in greater detail in the Affidavit in support of Aguti Juliet as hereunder;

1. That the Respondent in **Civil Suit NO.81 of 2022** filed against the Respondents.
2. That the Applicant was seeking therein declaratory orders that the land comprised in LRV 668 Folio 13 situate at Plot 15 Clive Road West Jinja belonged to the Applicant, it was unlawfully and fraudulently acquired by the Respondent and also an order of cancellation and or impeachment of the special Certificate of Title comprised in LRV 668 Folio 13 acquired fraudulently by the Respondent.
3. That the Respondents have on several occasions raised several preliminary objections so as to obstruct the matter for proceeding substantially and to cover up the fraud.
4. That the Respondents filed **Miscellaneous Application No.76 of 2023**, an application for security for costs and the Parties were ordered to file written submissions for the main application for security for costs.
5. That the Learned Registrar made a Ruling ordering the Applicant to pay security for costs and provide for proof for settlement of costs in the earlier suit; and the Ruling is being used oppressively to stifle Justice for the Applicant
6. That the Respondents haven't presented sufficient cause to show that they will not recover the costs; and the Applicant is a known business man in Jinja with well-known assets from which the Respondents costs can be recovered.
7. That the respondents are using this Application to deny Justice and cover the fraud that has been committed on the Applicant's land; and the

Learned Registrar erred in law when he ruled that the Applicant should provide proof of settlement of all costs in **HCCS No.154 of 2014** within 10 days from the date of the decision yet it is different from **Civil Suit No.81 of 2022** which appears to be speculative.

8. That the payment of costs of one suit does not affect the hearing of another and the Learned Deputy Registrar misdirected himself on the Law governing security for costs and on the law governing affidavits deposed by lawyers in contentious matters
9. That the aforementioned misdirection on the law led to a wrong conclusion thus causing a miscarriage of justice and they prayed that the orders of His Worship Waninda Fred K.B Deputy Register in **Miscellaneous Application No.76 of 2023** be set aside.

In Reply, the Respondent **Yeko Charles** filed an Affidavit in Reply in which he deposed that:-

- a) The contents of the Motion and supporting Affidavit deposed by Juliet Aguti had been explained to him by his counsel Elias Habakurama and he had fully comprehended the same.
- b) In reply to paragraphs 4,9,10 and 12, he averred that the Respondents have at all material times exhibited vigilance in having all the baseless suits filed against them by the Applicant properly adjudicated upon by the Honorable Court, as such, the claims by Aguti Juliet to the effect that the Applicants are using the Order issued by the learned Deputy Registrar to oppress the Applicant and deny justice is false and unfortunate.
- c) In reply to paragraph 11 of the Affidavit, that the contents of the said paragraph are total lies as the Appellant does not operate any business in Jinja, but rather a permanent resident of United Kingdom as clearly demonstrated in his Affidavit in Support of **Miscellaneous Application No.76 of 2023**.
- d) In reply to paragraph 13, that he is informed and advised by his counsel aforesaid that the Learned Deputy Registrar was wholly right to have made an order requiring the Appellant to furnish proof of payment of costs in **HCCS No.154 of 2014** as it was submitted by counsel for the Appellant that the Appellant had paid all costs awarded in earlier proceedings; and the Respondents relied on the Bill of Costs, Application for Execution, Notice to Show Cause, Affidavit of Service, Warrant of Arrest all marked as **Annextures R1, R2, R3, R4 and R5**.
- e) In reply to paragraph 15, 16, 17, that he is advised and informed by his counsel aforesaid which information and advice he verily believes to be true and correct that the Learned Deputy Registrar properly addressed his

mind to the pleadings and the law and arrived at the right and just decision when he ordered the Appellant to deposit security for costs prior to the hearing of the main suit; and that by reason of the matters aforesaid, the instant Appeal is an abuse of court process a waste of court's time and the same should be rejected as its devoid of any merits.

- f) That he is advised and informed by his counsel aforesaid which information and advice he verily believes to be true and correct that the Appellant instant is incompetent and the same should be dismissed with costs to the Respondent and the Appellant ordered to furnish the security for costs as directed by the Learned Deputy Registrar.

REPRESENTATION

When this matter came up for hearing before me, the Appellants were represented by learned counsel Mr. Richard Omongole of M/S. Omongole & Co. Advocates, while the Respondent was represented by Mr. Elias Habakurama of M/S. Habakurama & Co. Advocates. Both parties were directed to file Written Submissions, the Respondents complied and filed theirs on the 15th September 2023, however, the Applicant filed his Written Submissions late on the 18th September, 2023 after the Respondents.

THE BACKGROUND

The brief facts according to learned counsel for the Applicant is that the Applicant filed **Civil Suit No.81 of 2022** against the Respondent inter-alia , for unlawfully and fraudulently acquiring and getting registered on the Appellant's land comprised in LRV 668 Folio 13 Plot 16 Clive Road, West Jinja. The Respondent subsequently filed **Miscellaneous Application No.76 of 2023** for Orders that the Appellant furnishes Security for Costs to the tune of Ug. Shs. 300,000,000 in court for the payment of all costs to be incurred by the Respondents in defending the head suit.

The Learned Registrar made a Ruling wherein he ordered the Appellant to pay UGX. 140,000,000 as security for costs to be deposited in court within 30 days and to also provide proof of settlement of all costs in **HCCS No.154 of 2014**, within 10 days. The Appellant was aggrieved by these Orders and hence this Appeal.

On the other hand, the background according to learned Counsel for the Respondents is that the Respondents herein who are the Defendants in Land **Civil Suit No.81 of 2022** filed **Miscellaneous Application No.76 of 2023** seeking an order for Security for Costs incurred and to be incurred.

The Application was heard interparty and by Ruling of the Learned Deputy Registrar delivered on the 3/5/2023, the Honourable Court ordered the Appellant herein to deposit in Court a sum of Ug.Shs.140,000,000 as Security for Costs within 30 days from the date of the decision of court .

The Honourable Court further ordered the Appellant (Plaintiff) within 10 days from the date of ruling to furnish proof that he had paid the costs to **Jinja HCCS No.154 of 2014**.

Being dissatisfied and aggrieved by the ruling of the Learned Deputy Registrar, the Appellant filed an Appeal instant by way of Notice of Motion on a number of grounds seeking that the order of security for costs among other orders of the Deputy Registrar be set aside.

The Appellant's appeal was supported by two affidavits deposed by a one Juliet Aguti; one in support of the motion and another one in rejoinder.

The Respondents strongly opposed the Appeal through an Affidavit in reply deposed by Yeko Charles which was filed on Court record on the 24th day of May 2023.

From my own analysis, the genesis of this matter is the Ruling of the Deputy Registrar dated 3/05/2023 in **Miscellaneous Application No.76 of 2023** for the Appellant to deposit in court a sum of Uganda shillings 140,000,000/= in cash within one month of the Ruling or and to provide proof of settlement of all costs in **Jinja HCCS No.154 /2014** within 10 days from the date of the Ruling. The Order followed the filing of **Civil Suit No.81 of 2022** by the Respondents.

The gist of the suit from which the Application for security for costs arose and that gave rise to this appeal against the order to furnish security for costs. **HCCS No.81 of 2022**, the Plaintiff (now Appellant) filed a plaint that he is the registered proprietor of the suit land comprised in Leasehold register Volume 668 Folio 13 situate at Clive Road West Plot 16 Jinja Municipality for:-

- a) A declaratory order that the land comprised in Leasehold register Volume 668 Folio 13 situate at Clive Road West Plot 16 Jinja Municipality belongs to the Appellant;
- b) A declaration that the 1st and 2nd Respondents unlawfully and fraudulently acquired and got registered on the Appellant's land comprised in Leasehold Register 668 Folio 13 situate at Clive Road West Plot 16 Jinja;
- c) An order that the Appellant is entitled to compensation at the current market value for his developments which were demolished/ destroyed

without compensation and for the period he was deprived of his land until payment in full;

- d) An order that the Appellant is entitled to damages for mental torture and suffering caused; an order for cancellation and or impeachment of Special Certificate of Title comprised in Freehold Register Volume 668 Folio 13 acquire fraudulently by the Defendants(now Respondents); and
- e) An order of demolition of illegal structures on the land; and order for payment of mesne profits by the 1st and 2nd Defendants; an order of payment of interest at commercial rate of 25% from cause of action till settlement of the matter; an order of payment of costs.

RESOLUTION OF THE APPLICATION

PRELIMINARY POINT OF LAW

When the above appeal came up for hearing on the 16/8/2023, the Honourable Court made directions for parties to file written submission as follows:-

“(a) The Appellant’s Counsel was to file and serve his Written Submissions upon the Respondents’ Counsel by the 1/9/2023.

(b) The Respondents’ Counsel was to file and serve his Written Submissions upon Counsel for the Appellant by the 15/9/2023.

(c) The Appellant’s Counsel was to file and serve his Written Submissions in rejoinder if any upon the Respondents’ Counsel by the 22/9/2023”.

That the Respondents took all the necessary steps to cross check with the Civil Registry and the court clerk attached to the Honorable Judge to find out whether any written submissions have ever been filed by the Appellant’s Counsel, but their findings are that none had been filed to up to 18th of September when the Appellants decided to file after the time schedules directed by the court.

Accordingly, the Respondents prepared their Written Submissions without any reference to the Appellant’s Counsel’s submissions which are non-existent on the Court record until the 18/9/2023 way after the Respondents had filed theirs.

Counsel for the Respondents raised a Preliminary point of Law namely; that the Appeal is incompetent and improperly before the Honorable Court.

It was therefore submitted by learned Counsel for the Respondent that he had taken all necessary steps to cross check with the Civil Registry and the court clerk attached to court to find out whether any written submissions have ever been filed by the Appellant’s counsel, but none had been filed as directed by court. Therefore the Respondents had to prepare their written submissions

without any reference to the Appellant's counsel submissions which were non-existent on the court record.

I have carefully examined the record before me and I have found that indeed the Respondents filed their Written Submissions as directed by this court and the Applicants filed their Written Submissions on the 18th of September and their Rejoinder on 4th October 2023. It is clear that the Applicants never sought for leave to extend the timelines within which to file the Written Submissions.

Order 51 r 6 of the Civil Procedure Amendment Rules 2019 provides that;

“Power to enlarge time.

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made until after the expiration of the time appointed or allowed; except that the costs of any application to extend the time and of any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order”.

The Appellant's Counsel did not comply with the court direction and filed submissions 9 days out of time and served them on the Respondent after the Respondents had already filed theirs. That the Appellants didn't even bother to apply for extension of time to file submissions. The Appellants ignored the court directives which prejudiced the Respondents which affects the efficient progress of litigation.

This act of the Appellant and its Counsel is in contemptuous of court directives without any explanation and goes against the provisions of **Order 51 rule 6 of Civil Procedure Rules**. That the orders of court are sacrosanct and should be respected whether they please or displease the party as long as they stand and are still valid; and this indicates dilatory conduct on part of the Appellant not to file his written submissions and have this matter concluded by the court, thereby creating unnecessary backlog.

It is the duty of the litigant to take steps aimed at speedy trial of their matters and not court to push. In ***Housing Finance Bank Limited & Anor vs. Edward Musisi Misc. Application No. 158 of 2010***, the court herein was very emphatic on effecting court orders and decided that;

“That those Court orders are supposed to be respected at all material times, they are not made in vain and not for sports, therefore parties should not choose to ignore them the way they wish without giving sound reasons to court.”

From the above, I do not need to labor the point and I therefore agree with learned counsel for the Respondent and the law cited above; however, since it is clear that filing written submissions is the basis of arguing the Appeal itself.

Thirdly, it was submitted for the Respondents that the appeal is incompetent and improperly before the Honorable Court and submitted that the ruling and orders appealed against were issued by the learned Deputy Registrar in exercise of his **Civil Procedure Amendment Rules S1 No. 33 of 2019**.

That the Orders of Security for Costs being appealed against was made pursuant to **Order 26 rule 1 of Civil Procedure Rules** which order was originally **Order 23 before the Civil Procedure Rules** were amended by the rules committee.

In addition, that **Order 44 (j)(a)-(u) of Civil Procedure Rules** which is the equivalent of **Order 40 of the old Civil Procedure Rules** lists down the orders which are appealable as of right; and submitted that an order for security for costs which is issued under **Order 26 rule 1** is not one of the orders listed under **Order.44 CPR** as appealable as of right.

Order 44 CPR of provides Thus;

“An appeal under these rules shall not lie from any other order except with leave of the court making the order of the court to which an appeal would if leave were given”.

They submitted that automatically, it is apparent that the appellant did not apply for leave before the Deputy Registrar to appeal his decision to the learned Trial Judge before whom this appeal is pending.

Equally, that it is very apparent that the Appellant did not seek any leave from the Appellate Court, which he could only have done after being denied leave by the learned Deputy Registrar.

That the dictates of **Orders 44(2) CPR** is mandatory, and any appeal that is lodged without leave of court where there is no automatic right of appeal, such appeal is incompetent and cannot be entertained by the Honorable Court, however meritorious it might be. They relied on the Supreme Court decision in the case of **G.M Combined vs. A. K Detergents SSCA No. 23 of 1994 reported in 1994 v KALR page 63**.

That the main thrust of the above judicial precedent is to the effect that if an aggrieved party against whom an order for security costs has been issued desires to appeal, such a party must first seek leave of the court making the order, and if that party is denied leave he, should seek leave from the appellant court. That in a wealth of authorities by the High Court, Court of Appeal and Supreme Court have on all occasions held an emphasized that failure by a party to seek leave to appeal where there is no automatic right of appeal, renders but to strike the same out; and heavily rely on the authorities of ***DR. Sheikh Ahmed Mohammed Kisule vs Green Lan Bank (In Liquidation) SCCA No. 11 of 2010 and INCAFEX Ltd vs James Kabagereine CACA 16 of 1997.***

They therefore submitted that the instant appeal which was lodged without first obtaining leave to appeal is incompetent, amounts to o appeal at all and the Same should be struck out which costs to the respondent as it's is a mere waste of the precious time of court.

In resolving this Preliminary Point of Law, I indeed noted with concern that there is nowhere where the Applicant applied for leave to appeal against the Ruling of the Learned Deputy Registrar of this Court. I therefore agree with the submissions of learned counsel for the Respondents and find that this Appeal /Application by Notice of Motion as the Applicant presented it was incompetently filed.

The above Preliminary Points of Law would be enough to dispose of this matter, however, be that as it is, I have found it prudent to address the substantive rounds as well so that this matter is completely put at rest and to avoid a multiplicity of proceedings.

SUBSTANTIVE GROUNDS IN THE APPLICATION

Issues

In his Written Submissions, learned counsel for the Appellant proposed the following issues:-

1. Whether the learned Registrar erred in law and fact when he ruled that the Applicant deposits Uganda shillings 140,000,000 as security for costs within 30 days from the date of the ruling without properly considering the law on security for costs?
2. Whether the learned Registrar erred in Law and fact when he ruled that the Applicant provides for proof of settlement of all costs in Jinja

HCCS No.154 of 2014 within 10 days from the date of making his decision?

3. Whether the learned Registrar erred in law and fact when he failed to properly analyze the pleadings on record thus coming to a wrong conclusion?

In resolving all the issues/grounds in this Appeal, I have carefully considered the grounds raised, the law and submissions of both sides.

It was submitted by Learned Counsel for the Appellant that **Black's law Dictionary Abridged 5th edition at page 704**, defines security for costs as :-
"Payment into court in the form of cash, property or bond by a plaintiff or an appellant to secure the payment of costs of the suit".

Further, that **Order 26 Rule 1 of the Civil Procedure Rules Cap 71**, provides that:-

"The court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any Defendant."

They cited the case of **G.M Combined (U) Limited vs. A.K Detergents (U) Limited SCCA No.34 of 1995**, where Oder JSC cited various authorities on security for costs and summarized the position of the law as follows;

"From the many authorities I have considered above, the summary of the position regarding the merit of the plaintiff's case or that of the Defendant as a factor in exercising the court's discretion under Order 23 r.1 and Section 404 of the Companies Act in favour or against an application by a Defendants for Security for Costs may be stated as follows;

- 1. A major consideration is the likelihood of success of the plaintiff's case; put differently, whether the plaintiff has a reasonably good prospect of success; whether the plaintiff's claim is bonafide and not a sham.*

- 2. If there's a strong prima facie presumption that the Defendant will fail in his defence to the action, the court may refuse to grant him Security for Costs if it may be a denial of justice to order a plaintiff to give Security for Costs a Defendant who has no defence to the claim;*

- 3. Whether there's an admission by the Defendant on the pleadings or else-where that money is due.*

- 4. If the Defendant admits so much of the claim as would be equal to the amount for which security would have ordered the court may refuse him security for he can secure himself by paying the admitted amount into court.*

5. *Where the Defendant admits his liability, the plaintiff will not be ordered to give Security for Costs.*

6. *Where there is a substantial payment into court or an “open offer” of a substantial amount an order for Security for Costs will not be made.*

In a nutshell, in my view, the court must consider the prima facie case of both the plaintiff and the Defendant. Since a trial will not yet have taken place at that stage, an assessment of the merit of the respective cases of the parties can only be based on the pleadings, on the affidavits filed in support of or in opposition to the application for Security for Costs and any other material available at that stage.”

In addition, that in the case of **Bank of Uganda vs. Joseph Nsereko & 2 Others Civil Application No. 7 of 2002**, Mulenga JSC (as he then was) observed as follows:-

“I think it is well settled that an Applicant for Security for Costs has a burden to satisfy the court that the circumstances justify an order being made”.

They submitted that the present Appeal, the Respondent failed to prove to court that the circumstances pertaining this matter justify an order for Security for Costs being made. That the Appellant/plaintiff in this matter obtained a lease for 99 years from the Registered Trustees of Church of Uganda, the lease is still running to date. The plaintiff repossessed his property from the Custodian Board. The Respondents fraudulently registered on the special Certificate of Title while the Appellant has his Original Duplicate.

That the Appellant’s claim is lease but the Respondents purport to have bought undefined interest without the Consent of the lessor (Registered Trustees of Church of Uganda) contrary to the Lease Agreement and Laws of Uganda; on this ground alone, the defence case is unsustainable. That the law is clear, one cannot obtain interest of a sublease or any other from a lease without written consent of the original lessor.

Secondly, that the plaintiff/Appellant has strong evidence that the Respondents/Defendants forged a Special Certificate by presenting a fake person (a woman) as the plaintiff who is male.

Furthermore, that from the pleadings, the Appellant has a prima facie case and the Respondents stand no chance in their case due to fraud and failure to obtain consent from the Registered Trustees.

In addition, that the Respondents being aware of their weak case, are now trying to subjugate justice by unnecessary hanging on to the issue of security for costs

to try and escape from their fraudulent and unlawful actions. That from the **GM. Combined case (supra)**, the Appellant satisfies the first two conditions which are relevant to the instant case; and that the Appellant's case has reasonably good prospect while it is clear, as ground two presupposes, the Respondents will fail in their defence or action and now hope to use security of costs to deny the Appellant justice.

They also argued that the Learned Registrar did not consider the above facts and law in the **GM. Combined case (supra)** before ordering for security for costs and contended that the Appellant obtained a Certificate of Repossession from the Departed Asians Property Custodian Board (DAPCB) and thereafter took possession of the suit property, he issued Powers of Attorney to Messrs S.N Gandesh & Co. Advocates and subsequently to M/S. Matovu & Matovu Advocates to care take the property for him but both mismanaged his property. The Respondents took advantage and fraudulent purported to transfer the said land hence the suit.

That the Appellant in his plaint listed the particulars of fraud by all the Respondents but none of this was considered by the learned Registrar.

The learned Registrar erred in law and fact when he held as follows:

"This court has deciphered the plaint in the head suit and gathered that the Respondent is seeking declarations as to ownership of the suit property, cancellation of title on grounds of illegalities and fraud among other remedies like compensation and demolition as gathered from paragraphs 3 to 6 of the plaint.

.....

In a nut shell, the Respondent has not complied with Order 19 r 3 of the Civil Procedure Rules and there is no valid reply to this Application. As to whether the suit is frivolous and vexatious, I leave this for the trial Court. However, hold that from the pleadings, Chamber Summons and Affidavit evidence available with annexures, the Applicants are being put to undue expenses".

Again, that the learned Deputy Registrar did not consider the Appellant's claim in the main suit and even stated that he "leaves that to the trial Court", but instead considers chamber summons and the affidavit leaving the Head suit as guided in the **GM. Combined case (supra)**.

That the defence to that claim to ascertain whether there was a prima facie case. He only considered the technicalities raised by the Respondent of the Affidavits deposed by Ms. Aguti Juliet a lawyer with Omongole & Co. Advocates and based on that to impose an exorbitant fee of Ug. Shs. 140,000,000 as Security for Costs.

Secondly, that the Respondent does not have a good defence to the suit thus it was a denial of justice to order the Appellant the Registered Proprietor of the suit land to give Security for Costs to a Respondent who has no valid defence to the claim.

They concluded that by stating that the learned Registrar erred in law and fact when he imposed Security for Costs on the Appellant without considering that the Respondent's Written Statement of Defence has no valid defence to the Appellant's claim, all there is are bare denials.

Furthermore, that, there was no legal justification for the learned Deputy Registrar to impose onto the Appellant Security for Costs of over Ug. Shs. 140,000,000 without putting into consideration the essential ingredients for the grant of Security for Costs as set out in the **GM. Combined case (supra)** and invited this Honourable Court to set aside and allow the matter to proceed on merit.

Turning to their second issue, they submitted that the Respondent's counsel misdirected court when he brought in issues pertaining past cases namely: **Civil Suit No.154 of 2014** that was concluded as distinct from the present case. That the learned Registrar erred in law and fact when he held as follows;

"The Respondents is ordered to provide proof of settlement of all Costs in Jinja HCCS No.154 within 10 days from the date of this decision."

That the issue pertaining to **Civil Suit No. 154 of 2014** are different from those in the present Suit. The parties are different and so are the causes of action. The Orders in **Civil Suit No.154 of 2014** cannot be used to frustrate the determination of the present Suit on its merit, doing so would occasion a miscarriage of justice onto the Appellant. If the Respondent's claim that the costs in Civil Suit No.154 of 2014 were not paid then, they are at liberty to commence execution proceedings against the Appellant. However, those costs were paid to Counsel in Jinja District Land Board who is not a part in the present case. They are not costs of the Respondents' lawyers. In fact the Respondents' lawyers are form shopping. My Lord, what the learned Registrar did, was to aid the Respondents in initiating unlawful execution proceedings against the Appellant, an act that this Honorable court should not condone.

Secondly, that all costs out of **Civil Suit No.154 of 2014** were paid by the Appellant and there are no pending costs. **Civil Suit No.154 of 2014** was amended against a different party.

That Aguti Juliet, in paragraphs 11, 12, and 13 of her Affidavit in Rejoinder, states as follows:

“11.That in Rejoinder to paragraph 5 of the Respondent’s Affidavit in Reply, the costs raised by the Respondents were paid by the Applicant, the money was received by a clerk to the Respondent’s counsel. A copy of the cheque is hereto attached as ‘C1-C3’.

12.That it was an error for court to Order payment of already paid costs in Civil Suit No.154 of 2014 where the Respondents are not a party

13.That the Applicant has no pending/ outstanding costs that can prevent the main suit from proceeding to hearing on its merits.”

That the 1st Respondent neither depended an Affidavit nor issued a power of Attorney for the 2nd Respondent to depose an Affidavit on his behalf. The learned Registrar therefore, erred in law when he considered costs in **Civil Suit No.154 of 2014** amidst these glaring illegalities and forgetting that it had nothing to do with the present suit. These illegalities completely render the Defendants’/Respondents’ case a non-starter and security for costs should have been denied and we pray they are set aside.

Turning to **ISSUE 3**, they submitted that the Respondent misdirected the learned Registrar into ordering the Appellant to deposit Ug. Shs. 140,000,000 (Uganda Shillings One Hundred Forty Million) in the form of Security for Costs which sum was too excessive at best and exorbitant at worst. That in case of **Ramzanali Mohamed Ali Meghani vs Kibona Enterprises CACA No.27 of 2002** it was held as follows;

“However, it would be wrong to grant an order for security for costs in excess. An order for security for Costs should not be used as a weapon to enable the strong to deny the weak access to court of law or justice.”

That the court went farther ahead to state that;

“However, the sum of shs. 80,000,000/= in the circumstances of this case was in my view on the high side. In the absence of an evaluation report of the disputed property and disparity between the fingers of shs. 30 million and shs.300, 000, 000/= estimated by the parties there is no justification for payment of that high figure of shs.80 million. This court is for justification for payment

of that high figure of shs.80 million. This court is for that reason justified to interfere with the discretion of the trial judge for that costs granted by the owner court.”

They therefore argued that the Order of UG SHS. 140,000,000 was too excessive, and much as the judicial Officer had the discretion to impose Security of Costs he ought to have exercised that discretion judiciously, which was not done in this particular case. That in the Plaintiff, there's no value in which the Learned Registrar based to award a figure of Shs. 140,000,000 (one hundred forty million shillings). No evidence was adduced to justify such an excessive figure.

Further, the Respondent has at all material times been raising unnecessary endless preliminary objections in order to frustrate the matter from being heard on its merits. That Aguti Juliet, in paragraphs s. 23, 24, 25, and 26 of her Affidavit in Rejoinder states as follows;

“23. That it is in the best interest of justice that this appeal be allowed by this honorable Court for the ends of justice of the case and the matter be heard substantially to determine the rightful owner.

24. The Respondents should not be allowed by honorable Court to hide their Fraud and international theft of the Applicant's property under the issue of Security for Costs and unindented preliminary objections/ technicalities.

25. That the Respondents have made it a habit at every hearing to raise unnecessary objections so that the matter is not heard substantially.

26. That the respondent raised the previous objections on the following dates and occasions that have prevented the matter to be heard on merit

- I. 2nd November 2015***
- II. 6th September 2017***
- III. 14th March 2019***
- IV. 4th November 2019***
- V. 19th November 2019***
- VI. 6th October 2022***
- VII. 13th April 2023.”***

They argued that the endless preliminary objections and exorbitant costs are only intended to help the Respondents to frustrate the matter from being heard

on its merits as they hide behind technicalities to cover their weak defense and fraud; and submitted that the learned Registrar erred in law and in fact when he imposed such excessive amounts as security for costs to a propertied appellant whose land was unlawfully and frequently acquired by the respondents who misled the registrar to bring issues of costs in previous cases that already been settled.

Further that the respondent should not be allowed to frustrate the hearing of the case on merit by raising endless objections and imposing unreasonable costs; and prayed that this honorable court dismiss this appeal and sets aside the orders of the Registrar.

In reply, it was submitted by Learned counsel for the Respondent that as can be gathered from the Notice of Motion and the two supporting Affidavits deposed by AGUTI JULIET, it is the Appellant's complaint that the Learned Deputy Registrar was wrong to have made an order for security for costs reasoning that the Appellant who stays abroad does not have tangible assets that would be resorted to for recovery of costs incurred by the Respondents' (Defendants) in the event that the Appellant's suit eventually fails.

They further contended that the Learned Deputy Registrar having found that there was no Affidavit in Reply filed by the Appellant in response to the Affidavit deposed by YEKO CHARLES as the Affidavit in reply was in response to the Affidavit of GUME FRED NGOBI who never deposed any Affidavit in support of the chamber summons seeking an order of security for costs; but never the less went ahead to determine the Appeal on its own merits and granted the same in the terms stated in the Ruling was wholly right in arriving at the decision he made.

In addition, that the instant has no merit and is incurably defective as it is accompanied by an incurably defective Affidavit. That the affidavit in Support of the Appeal and the Affidavit in rejoinder are both deposed by AGUTI JULIET.

Furthermore, that under paragraph 1 of the Affidavit in Support of the Notice of Motion and the Affidavit in Rejoinder AGUTI JULIET describes herself thus,

"That I am an adult female Ugandan of sound mind, a Lawyer with Omongole & Co. Advocates, familiar with this application/ appeal and all the facts, concerning this matter and swear this affidavit in that capacity".

They therefore argued that from the above statement which was made on oath, AGUTI JULIET is not an Advocate but a mere Lawyer working with Omongole & Co. Advocates; and she is therefore like any other staff with Omongole and Co.

Advocates such as a Law Clerk, Office Administrator and an Accountant who are not covered under the Advocates Act and the **Civil Procedure Rules**. They drew its attention to order 111 of Civil Procedure Rules which talks about RECOGNISED AGENTS AND ADVOCATES.

That from the said order, it is only an Advocate or persons with Powers of Attorney or persons with written authority allowed to represent any person to any dispute before a Court of competent Jurisdiction. AGUTI JULIET does not fall under the category of the persons envisioned by **Order 111 of Civil Procedure Rules** and is not covered by the **Advocates Act**.

They submitted that the Appeal instant is incurably defective, a clear abuse of Court process as it is supported by the Affidavits of AGUTI JULIET who has no written authority from the Appellant herein to depose the Affidavits in support of the Appeal or his behalf.

On this point they heavily rely on the cases of ***Makerere University vs St Mark Education Institute Ltd and High Court of Uganda Jinja Miscellaneous cause No. 37 of 2022 Kayinza Reheme & 2 others vs Board of Governors Wanyange Girls Secondary School*** .

Regarding the Appellant's complaint that the Learned Deputy Registrar misdirected himself when he ordered that the Appellant deposits a sum of Ug.Shs. 140.000.000 One Hundred Forty Million as security for costs without having due regard to the Law governing security for costs, they argued that the Learned Deputy Registrar was wholly right to have granted the order for security for costs as the evidence which was available before him was to the effect that the Appellant is a resident of United Kingdom, that he does not have immovable and/or tangible assets that would be resorted to for recovery of costs in the event that the Respondents became successful.

That all these material facts were not rebutted by JULIET AGUTI who had no authority to depose the Affidavit in reply but illegally did so and again misfired the first shot by making an Affidavit in reply to that of NGOBI GUME FREDRICK who had not filed any on the Court record, as the only Affidavit on Court record is that of YEKO CHARLES.

It was, therefore, their submission that in granting the order for security for costs the Learned Deputy Registrar exercised his discretionary power judiciously and with Justice and pray that this Honourable Court should not interfere with the exercise of his discretion, which is only done in rare cases where it is found out that the judicial Officer did not exercise his/her discretion judiciously; and humbly prayed that the Appellant's Appeal be struck out with costs on ground

of being incompetent and being devoid of any merit and the orders of the Learned Deputy Registrar be upheld.

I have carefully analyzed the proceedings before the Learned Deputy Registrar as availed to me, his Ruling and the submissions of both sides. To me, the only issue to decide is **‘Whether the Learned Deputy Registrar rightly applied the law when he granted orders for security for costs against the Appellant?.**

A critical analysis of the Ruling appealed against shows that the law applied by the learned Deputy Registrar is correct.

Order 26 of the CPR (as amended) reads

“Security for the costs of a defendant”

(1) The court may if it deems fit order a plaintiff in any suit to give security for the payment of all costs incurred by any defendant.

The above cited law is straight forward and couched in very clear terms. In making this order and after analyzing the file, I find that he arrived at them judiciously and I cannot fault him on the decision he arrived at.

For those reasons, it is my finding and decision that this Appeal lacks merit. It is accordingly dismissed with costs to the Respondents in both High Court and the Court below.

1. That **Civil Appeal No.003 of 2023** is dismissed for being incompetent and due to lack of merit since there was failure to comply with Court Orders and for failure to obtain leave to enlarge time within which to file.
2. The Ruling and Orders of the Learned Deputy Registrar in **Miscellaneous Application No.76 of 2023** are hereby upheld with an addition that they should be complied with within 10 days of reading this Judgment.
3. The costs of this Appeal and in the court below are awarded to the Respondents.

I SO ORDER

JUSTICE DR .WINIFRED N NABISINDE
JUDGE
13/12/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right of Appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR .WINIFRED N NABISINDE
JUDGE
13/12/2023

1. That **Civil Appeal No.003 of 2023** is dismissed for failure to comply with court orders and for failure to obtain leave to enlarge time.
2. The judgment and orders of the Learned Deputy Registrar in **Miscellaneous Application No. 76 of 2023** are hereby upheld.
3. The costs of this appeal are awarded to the Respondents.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
18/10/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
18/10/2023

The respondents herein who are the defendants in land crucial suit no.081 of 2022 filed miscellaneous application no.76 of 2023 seeking an order of security for costs incurred.

The application was heard interparties: and by the ruling of the learned deputy registrar delivered on the 3/5/2023, the honorable court ordered the appellant herein to deposit into court a sum of ug.shs 140,000,000 as security for costs within 30 days from the date of the decision of court.

The honorable court further ordered the appellant to within ten days from the date of the ruling furnish proof that he had paid the costs in jinja H.C.C.S no.154 of 2014.

Being dissatisfied with and aggrieved by the ruling and orders of the learned deputy registrar, the Appellant filed the appeal instant by way of notice of motion on a number of grounds seeking that the order of security for costs among other orders of the deputy registrar be set aside

The appellants appeal is supposed by two affidavits deposed by a one Juliet Aguti namely; one in support of the motion and another one in rejoinder.

The respondents strongly opposed the appeal through an affidavit in reply deposed by YEKO CHARLES which was filed on court record on the 24th of may2023.

When the above appeal came up for hearing on the 16/8/2023, the honorable court made directions for parties to file written submission as follows:.

(a)The appellan's counsel was to file and serve his written submissions upon the respondents counsel by the 1/9/2023.

(b). The respondent's counsel was to file and serve his written submissions upon counsel for the appellant by the 15/9/2023. (c). The appellants counsel was to file and serve his written submissions in rejoinder if any upon the respondents counsel t the 22/9/2023.

You lordship, we have taken all the necessary steps to cross check with the civil registry and the court clerk attached to your court to find out whether any written submissions have aver been filed by the appellants counsel, but our findings are that none have filed to date.

Accordingly we have had to prepare our written submissions without any reference ti the appellants coulsels submissions which are non existent in the court record.

My lord, before we address you on the merits of the appeal pending before you for consideration, we have a preliminary point of law to rise namely; that the appeal is incompetent and improperly before the honorable court.

MERITS OF THE APPEAL

Turning on the merits of the grounds of appeal as can be gathered from the notice f motion and the two supporting affidavits deposed by AGUTI JULIET, it is the appellants complaint that the learned deputy registrar was wrong to have made an order for security for costs reasoning that the appellant who stays abroad does not have tangible assets that would be resorted to for recovery of costs incurred by the respondents (defendants) in the event that the appellants suit eventually fails.

Your lordship, the learned deputy registrar having found that there was no affidavit in reply filed by the appellant in response to the affidavit deposed by YEKO CHARLES as the affidavit in reply was in response to the affidavit of

GUME FRED NGOBI who never

deposed any affidavit in support of the chamber summons seeking an order of security for costs, but never the less went ahead to determine the application on its own merits and granted the same in the terms stated in The ruling; was wholly right in arriving at the decision he made.

Your lordship, the appeal instant has no merit and is incurably defective as it is accompanied by an incurably defective affidavit.

The affidavit in support of the appeal and the affidavit in rejoinder are both deposed by AGUTI JULIET.

Under paragraph 1 of the affidavit in support of the notice of motion and the affidavit in rejoinder AGUTI JULIET describes herself thus,

“That I am an adult female Ugandan of sound mind, a lawyer with Omongole and co. Advocates, familiar with this application/ appeal and all the facts, concerning this matter and swear this affidavit in that capacity”

My lord from. The above statement which was made on oath, AGUTI JULIET is not an advocates but a mere lawyer working with Omongole and co. advocates. She is therefore like any other staff with Omongole and co. Advocates such as a law clerk, office administrator, an accountant who are not covered under the advocates Act and the civil procedure rules.

Your lordship, your attention is drawn to order 111 of civil procedure rules which talks about

RECOGNISED AGENTS AND
ADVOCATES

A copy of the page of civil procedure rules where order 111 appears is Hereto attached.

From the said order, it is only an advocates or persons with powers of Attorney or persons with written authority allowed to present any person to any dispute before a court of competent jurisdiction. AGUTI JULIET does not fall under the category of the persons envisioned by order 111 of civil procedure rules and is not covered by the advocates act.

It is, our submission that the appeal instant is incurably defective, a clear abuse of court process as it is supported by the affidavits of AGUTI JULIET who has no written authority from the appellant Gerri. to depose the affidavits in support of the appeal or his behalf.

On this point we heavily rely on the case of MAKERERE UNIVERSITY VS ST MARK EDUCATION INSTITUTE LTD and high court of Uganda jinja miscellaneous cause no. 37 of 2022

KAYINZA REHEME and 2 OTHERS

VS BOARD OF GOVERNORS

WANYANGE GIRLS SECONDARY

SECONDARY SCHOOL all Hereto attached. See the highlighted parts.

Regarding the appellants complaint that the learned deputy registrar misdirected himself when he ordered that the appellant deposits a sum of Ug. Shs. 140.000.000 as security for costs without having due regard to the law governing security for costs; it is our submission that the learned deputy registrar was wholly right to have granted the order for security for costs without as evidence which was available before him was to the effect that the appellant is a resident of United Kingdom, that he does not have immovable and/ or tangible assets that would be resorted to for recovery of costs in the event that the respondents became successful.

All these material facts were not rebutted by JULIET AGUTI who had no authority to depose the affidavit in reply but illegally did so and again misfired the first shot by making an affidavit in reply to that of NGOBI GUME GREDRICK who had not filed any on the court record, as the only affidavit on court record is that of YEKO CHARLES.

It is, therefore , our submission that in granting the order for security for costs the learned deputy registrar exercised his discretionary power judiciously and with Justice and pray that this honorable court should not interfere with tutor exercise of his discretion, which is only done in rare cases where it is found out that the judicial officer did not exercise his /her discretion judiciously.

All in all it is our humble prayer that the appellants appeal be struck out with costs in ground incompetent and being devoid of any merit and the orders of the learned deputy registrar be upheld.