

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 742 OF 2016
(Arising from Miscellaneous Application No. 100 of 2016)
*(Also arising From Civil Suit No. 300 of 2015)***

BANK OF UGANDA ::::::::::::::::::::::::::::::: APPLICANT

Versus

ISMAIL DAMULE & 1004 OTHERS ::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This application is brought by Notice of Motion under Section 82(a) of the CPA and Order 46 rule 1 & 8 of the CPR. It is for orders that;

- i) The ruling of the court in Misc. Application No. 100 of 2016 delivered on the 12th July 2016 be reviewed to award the applicant additionally the costs of the dismissed suit.

- ii) Costs of the application be provided for.

The grounds of this application as stated in the affidavit of MR. TITUS W. MULINDWA are that;

- a) On the 12th July 2016 the learned trial Judge delivered his ruling in Misc. Application No. 100 of 2016.

- b) The said application raised objections to and sought dismissal of the underlying suit on various grounds which objections were upheld and the suit dismissed.

- c) In his Lordship's ruling, the applicant was awarded the costs of the application but the ruling was silent on the costs of the Underlying suit which had been dismissed.
- d) His Lordship's omission to deal with the costs of the dismissed suit by either granting or refusing them with reasons was clearly inadvertent, the focus being on the costs of the application.
- e) That the said omission amounted to an error of law on the face of the record being failure by the court to exercise its discretion in relation to the costs of the suit by either granting or refusing them with reasons.
- f) That costs follow the event and had the inadvertent error of law on the face of the record not occurred the applicant would have been awarded the costs of both the application and the suit.
- g) That it is just and equitable that the court's ruling be reviewed and that the applicant be awarded the costs of the suit.

In their reply, the respondents in their affidavit by Ismail Dabule stated that;

- a) The applicant cannot be and is not aggrieved by the ruling of this Honourable Court on the 12th July 2016 vide MA 100/2016 as it succeeded on all grounds and was granted all prayers in that application.
- b) That there is no error apparent on the face of the record.
- c) There is no sufficient reason as by law established for this court to review its ruling in M/A 100/2016
- d) That I know that the applicant's application No.100/2016 did not pray for costs of HCCS 300/2015 in the event that it was dismissed.
- e) That I believe to be true that it is normal/usual/regular for a court of law to make no order as to costs.

- f) That if the applicants think the court erred in law in not awarding them cost, it is open to them to appeal but not to review the ruling.
- g) That the court's silence on costs in the main suit when the same were not even prayed for does not qualify it as an error apparent on the face of the record but rather proper exercise of court's discretion in a Judicious manner.

I have considered the application as a whole and submissions by both learned counsel.

As can be deduced from the Notice of Motion and the affidavits, the summary of the applicant's case is that in this Court's ruling of 12th July 2016, the applicant was awarded the costs of the application but the ruling was silent on the costs of the Underlying suit which had been dismissed.

That the said omission amounted to an error of law on the face of the record being failure by the court to exercise its discretion in relation to the costs of the suit by either granting or refusing them with reasons.

On the other hand, the respondent opposes the application that the court's silence on costs in the main suit when the same were not even prayed for does not qualify it as an error apparent on the face of the record but rather proper exercise of court's discretion in a Judicious manner.

The issue for consideration in this case is whether the said omission to award costs in the main suit amounted to an error on the face of the record.

It is trite law that just like the right of appeal, an order in review is a creature of statute which must be provided for expressly. So in considering an application for review, court exercises its discretion judiciously as was held in the case of **Abdul Jafar Devji Vs Ali RMS Devji (1958) EA 558.**

The grounds for review are clearly provided for and were outlined in **FX Mubwike Vs UEB High Court MISC. Application No. 98 of 2005.** These are;

1. *That there is a mistake or manifest mistake or error apparent on the face of the record.*
2. *That there is discovery of new and important evidence which after exercise of due diligence was not within the applicants' knowledge or could not be produced by him or her at the time when the decree was passed or the order made.*
3. *That any other sufficient reason exists.*

An error apparent on the face of the record was defined in **Batuk K. Vvyas Vs Surat Municipality AIR (1953) Bom 133** thus;

“No error can be said to be apparent on the face of the record if it is not manifest or self evident and requires an examination or argument to establish it.....”

In the book the **Law of Civil Procedure by Sarkar Ninth Edition 2000**, it was stated that;

“an error can be said to be one apparent on the face of the record only when such error is patent and can be located without any elaborate argument without any scope for any controversy with regard to such error which as if at a glance stares at the face. It is also worthy that an error is not limited to one of fact but it includes obvious error of law.”

According to **Section 27 (2) of the CPA** it states that;

“..... the costs of and incident to all suits shall be in the discretion of the court or judge.....but the costs of any action, cause

or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order.”

As mentioned by counsel for the applicant, this Court's did not pronounce itself on costs in the main suit in the court ruling of Misc. Application No.100 of 2016. It was within the Judge's discretion not to award the costs in the main suit although it was an omission not to give the reason for not awarding costs which was an error.

In the instant case, this court will proceed to review the matter and order that no costs will be awarded to the applicants in the main suit because the case did not take off and I find that the counsel did not incur a lot of expenses in handling HCCS 300/2015 and more so the applicants had not prayed for the costs in that suit, although costs follow the event.

I further order that each party shall bear its costs in this matter.

Stephen Musota

J U D G E

21.12.2016