THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISC. APPLICATION NO. 142 OF 2017

(Arising from HCT-02-CV-MA – 0066 of 2002)

HON. OBIGA KANIA :: APPLICANT

=VERSUS=

1. **WADRI KASSIANO EZATI**
2. **ELECTORAL COMMISSION :::::::::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE VINCENT OKWANGA

RULING

This is an application for review/correction of Court's Order brought by Notice of Motion filed in Court on 21/7/2017, under Sections 99, and 100, of the Civil Procedure Act, and Section 33 of the Judicature Act, Order 52 rr. 1,2 and 3, of the Civil Procedure Rules, for orders that;

1. The Ruling and Order of Justice Augustus Kania delivered in MA 0066 of 2002 on 18/6/2003, be amended and corrected to provide for **"Costs of the (that) application to be paid to the applicant by the 1st Respondent;"**

2. And that the costs of this application be provided for.

It is supported by the affidavit of the applicant, Hon. Obiga Kania dated 21/07/2017.

At the hearing of the application, Mr. Raphael Baku appeared for the applicant, while Mr. Jogo Tabu appeared for the 1st Respondent.

The 2nd respondent was not represented by any legal Counsel during the hearing in this application.

In his submission, Mr. Raphael Baku for the applicant argued that, in his ruling of 18/06/2003, the learned trial Judge, Hon. Justice Augustus Kania failed to provide for costs to the applicant in his said ruling although the Court had issued a Warrant of Arrest against the applicant which order was subsequently extended by the Deputy Registrar on 06/06/2003. Counsel submitted further that although such orders of Warrant of Arrest issued by the Grade One Magistrate's Court and subsequently extended by the Deputy Registrar of this Court as above, were quashed by the Judge, the learned trial Judge failed to address the issue of costs and accordingly made no orders to costs to the applicant. In his learned view, Counsel for the applicant feels that the trial Judge inadvertently left out the issue of costs to the applicant who was the successful party before that Court as costs usually follow the events. In this particular case, Counsel submitted that trial Judge had a duty to address the issue of costs and should have awarded that costs to the applicant.

Counsel invited this Honourable Court to invoke its inherent powers under the Judicature and the Civil Procedure Acts and correct such *'omissions'* and make the necessary redress to the applicant. He prayed that this Hon. Court makes a *'slip order'* to address and rectify such omission and give effect to the Court's clear/manifest intention in that ruling which would allow the applicant to recover his costs in MA 066 of 2002. Counsel cited a number of authorities same of which I shall refer to in my ruling herein later.

On his part, Mr. Jogo Peter Tabu, who appeared for the 1ST respondent submitted in reply that MA No. 0066 of 2002, was a serial number given from Court to a Bill of Costs which had been prepared and filed by the 1st respondent who had been awarded costs by a Decree made in an election Petition No. 03 of 2001, between the current applicant and the 1st Respondent. Counsel argued that such kind of serialization was at the initiative of the Court. Counsel submitted

further that after the Bill of Costs had been taxed and certificate of taxation had been issued in the sum of UGX. 102,545,950/= (One hundred two million five hundred forty five thousand nine hundred fifty) shillings only, the 1st Respondent sought to realize the fruits of his decree and applied for a Warrant of Arrest in Execution. when that application came up for consideration, preceded by a Notice to show cause on 06/05/2003, the Magistrate Grade 1 was the only Judicial Officer available at the Court premises at the time, the Court premises which houses both the High Court and the subordination Courts, all the files for the High Court were taken to this Grade I Magistrate for proper management for the day and due to the absence of the applicant and his lawyer in Court, the Grade I Magistrate proceeded to issue a Warrant of Arrest against the applicant which prompted the applicant to apply to Court to have it set aside. The matter then went to the High Court for review resulting into the ruling of 18/06/2013, by Hon. Justice Augustus Kania setting aside the said Warrant of Arrest Order. That ruling retained the Court's serial number of MA 066 of 2002.

The 1st Respondents' Counsel submitted that, Court orders and Decree have a time limit of twelve (12) years' validity from the date of issuance. This position pertains to executable Decrees and Orders under Section 35(1)(a) of the Civil Procedure Act. In the instant case, Counsel submitted, the applicant's application is a whooping fourteen years later, before the applicant as a holder of a Court Order took no action to enforce that Order, a conduct which to Counsel would amount to complacency or a serious case of being guilty of lackluster conduct on the part of the applicant.

In Counsel's view, the order of 18/06/2003, is not an executable order because no costs were awarded. The only cause of action opened to the applicant was to appeal to the Court of Appeal so that the decision by the trial Judge not to award costs would be reversed by that Court.

In the respondent's view, the slip Rule under Section 99 of the Civil Procedure Act caters for the following two circumstances namely;

i. *Where the Court is satisfied that it is to give effect to the (clear) intention of the Court at the time when the Judgment/ruling was given.*

ii. Secondly, it would apply in the case of a matter which was overlooked, where the Court is satisfied beyond doubt as to the Order which it would have made had the matter been brought to its attention.

He concluded that, the trail Judge was silent on costs because having realized that the illegal Order was made and subsequently extended by two Judicial Officers who, being immune from being sued for any errors or omissions occasioned by them while discharging Judicial functions, it must have been the intention of Hon. Justice Augustus Kania not to award costs to any of the parties as the real culprits who should have been penalized in costs would be these Judicial Officers, implying that, awarding costs to any of the parties would have been, as it were, visiting the mistakes of these Judicial officers upon the innocent litigants who were not party to the errors or omissions. He submitted that it would be wrong for the Court then, in 2003, and even today, in 2018, to award costs to the applicant. He prayed that the application be dismissed with costs.

Having followed the submissions of both Counsel very carefully, analyzed the Ruling of His Lordship Hon. Augustus Kania, dated 18/06/2003, and, having referred to the relevant authorities cited by both Counsel in this application, I find that the trial Judge having found that the Warrant of Arrest issued by the Grade I Magistrate on 6/05/2003, ordering for the arrest of the applicant was null and void, and so was the renewal of the said Order by the Assistant Registrar on 06/06/2003, deliberately decided not to award costs to the applicant on the basis that the errors occasioned in the issuance of such orders was not the fault of any party in that application.

Accordingly, the trial Judge set aside the two orders respectively for being null and void. This was done in his ruling of 18/06/2003.

In his submission, Mr. Raphael Baku for the applicant, argued that the trial Judge, Justice Kania Augustus failed to provide costs in his ruling of 18/06/2003, although that Court had issued a Warrant of Arrest against the applicant. Relying on the authority of **Ismail Karmali & 2 Others vs Shailesh Ruparelia, MA 121 of 2012 (Commercial Division), Arising out of HCCS No. 406 of 2009**; Counsel for the applicant cited Section 27(2) of the Civil Procedure Act contending

that the costs in any matter, action or cause shall follow the event and that Section 27(1)(2) applies in the instant case.

Section 27 of the Civil Procedure Act deals with costs in Civil matters; it reads; quote;

Section 27. Costs.

"(1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the Court or Judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); 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."

In the instant case, I find that the clear intention of the trial Judge, Hon. Justice Kania Augustus, as can be gathered from that ruling of 18/06/2003, was not to award costs to any of the parties in MA 0066 of 2003 after noting that the errors of issuing the Warrant of Arrest dated 06/05/2003, by Grade I Magistrate and the subsequent extension of the same Warrant by the Assistant Registrar on 06/06/2003, were errors by Judicial Officers for which the Court felt it unfair to punish any of the parties in that application MA No. 066 of 2003 with costs, which would offend the principle of justice that no litigant should be penalized for the mistakes or errors of Court or a Judicial Officer. His failure to award costs either to the applicant or the 1st respondent in MA 006 of 2003 was deliberate as costs are awarded at the discretion of Court or the Judge.

In the instant case, although there is clear intention from the trial Judge not to award costs to any of the parties in MA 066 of 2003, under Sub-Section (2) of Section 27 of the Civil Procedure Act, the trial Judge was under a duty to give reasons why the Court was not awarding costs in that instance. In that case, the trial Judge did not give any reasons why he was not awarding costs to any of the parties.

However, that notwithstanding, the reasons for not awarding the costs by the trial Judge is not impossible to decipher from his ruling as it is clearly embedded, as it were, in the entire ruling of the trial Judge dated 18/06/2003. Those reasons, I have already referred to in my foregoing paragraphs above; that is; the learned trial Judge did not wish to visit the mistakes of the Judicial Officers upon the innocent litigants with award of costs.

Infact, the clear intention of the trial Judge, as can be clearly gathered from his said ruling is that, the Court saw no reasons nor any justification in awarding costs to any of the parties in the instant case.

I now turn to consider the other aspects of Counsel Raphael Baku's submission that the trial Judge could have inadvertently left out the award of costs which he intended to award to the applicant and therefore, this Hon. Court, by applying the slip rule principle should now move to correct the error/omission in the ruling of Hon. Justice Kania's ruling above, in respect to costs not being awarded under Section 99 of the Civil Procedure Act (Cap. 71).

Counsel cited the case of **Uganda Development Bank Ltd vs Oil Sees (U) Ltd; MA 15 of 1997 (SC) and the case of Ismail Karamaji – (SUPRA)** in support of his contention that errors in Court orders or decree can be corrected to give effect to the Court's manifest intention or what should have been the Court's express intention in the order or decree.

I agree with Counsel for the applicant that Section 99 of the Civil Procedure Act, caters for correction/rectification of errors or omissions by Court in any Judgments, Orders, Decrees or error arising in them from accidental slip to give effect to the true and express intention of the Court.

Section 99 Civil Procedure Act, provides; quote;

Section 99 Amendment of judgments decrees or orders.

"Clerical or mathematical mistakes in judgments, decrees, or Orders or errors arising from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties,"

In the instant case, I find that the trial Judge in MA 066 of 2003 did not omit to award costs to any of the parties in his ruling of 18/06/2003, as contended by Counsel for the Applicant, rather, as can be gathered from the Court's express intention for reasons explained above, the Judge deliberately didn't award costs to any of the parties. He had reasons not to award costs to any of the parties in that instant case, not to visit the mistakes of the Court officials upon the litigants. The trial Judge had that discretion which I feel he exercised judiciously in the instant case.

By failing to give his reasons as required under Section 27(2) of the Civil Procedure Act, that failure is not fatal to the decision which he made in the said ruling of 18/06/2003, as his reasons for not awarding costs can be clearly gathered from the ruling as above. Such failure not to give his reasons why he is not awarding costs to any of the parties doesn't fall under the categories of clerical, mathematical, errors or accidental slip or omission envisaged under Section 99 of the Civil Procedure Act.

Accordingly, I find that Section 99, Civil Procedure Act doesn't apply in the instant case.

Furthermore, the decisions in the **Ismail Karmali and the Uganda Development Bank Ltd vs Oil Seeds (U) Ltd; (SUPRA)** are clearly distinguishable from the present scenario in the instant application by reasons I have labored above.

The corrections envisaged under Section 99, Civil Procedure Act is where the decision or ruling of Court does not correspond with the order or judgment it purports to embody. **In Uganda Development Bank Ltd (SUPRA**); The Supreme Court held thus;

1. *"In a situation like that, the Court has inherent jurisdiction to recall its judgments in order to give effect to its manifest intention or what clearly would have been the intention of the Court had some matter not been inadvertently omitted, but the Court will not sit on appeal against its own Judgment in the same proceedings."*

3. *"A slip order will only be made where the Court is fully satisfied that it is giving effect to the intention of the Court at the time when Judgment was given or in the case of a matter*

which was overlooked, where it is satisfied beyond reasonable doubt, as to the order which it would have made had the matter been brought to its attention. The applicant must therefore prove that there was a clerical or arithmetic mistake in the judgment or any error arising from an accidental slip or omission which did not give effect to the intention of the Court when it passed the judgment."

For reasons already alluded to in my Ruling herein above, I am not fully satisfied that my learned senior brother, Justice Kania Augustus, intended to award costs in MA 0066 of 2003 to the applicant or any other party in his ruling dated 18/06/2003. Accordingly, the slip order under Section 99 Civil Procedure Act will not be made by this Hon. Court as this Hon. Court is fully satisfied as to the express and manifest intention of the trial Judge at the time he delivered the said ruling. In my most considered view, the learned trial Judge deliberately chose not to follow the general rule that costs follow the event. He deliberately chose not to award costs to any of the parties for reasons which were clearly in his mind, that the mistakes made in the Orders of the Grade I Magistrate, and that of the Assistant Registrar, were mistakes by Court officials which should not be visited on the parties by awarding costs to any of them.

In **Kwizera Eddie vs The Attorney General; Constitutional Appeal No. 01 of 2008;** (Arising from Constitutional Application No. 18 of 2006) (Arising from Constitutional Petition No. 014 of 2005), Lady Justice Stella Arach Amoko, JSC, had the following important observations on that point.

Citing the case of **Vallabhadas Karsandas Raniga vs Mansuklal Jivraj & Others; (1965) EA 700;** Her Lordship quoted these holdings:

"…….. (iii) 'Slip Orders' may be made to rectify omissions resulting from the failure of Counsel to make some particular application."

"(iv) A slip order will only be made where the Court is fully satisfied that it is giving effect to the intention of the Court at the time when Judgment was given, or in the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention."

The Court then concluded thus;

" ……. It is therefore, now fairly well settled that there are two circumstances in which the slip rule can be applied namely:

i. Where the Court is satisfied that it is giving effect to the intention of the Court at the time when the Judgment (ruling) was given.

ii. In the case of a matter which was overlooked where it was satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention."

In **Raniga vs Jivraj case (SUPRA)**, the Court declined to apply to the 'slip rule' and gave the following reasons for its decision.

"In the instant case, after hearing the applicant's Constitutional Petition No. 14 of 2006, this Court allowed in part and ordered each party bears its own costs. In making that order for costs, the Court exercised its discretion and made deliberate decision based on the outcome of the Petition that was partial. There was no slip, error, or mistake or even an omission. We have also not been shown to have overlooked any matter".

The Court went on to hold thus:

"If the Court erred in its deliberate exercise of its discretion under Section 27(1) and (2) of the Civil Procedure Act to make the order it made, the slip rule is not the answer. The solution lies in an appeal to a higher Court".

"The slip rule cannot and should not be used to correct errors of substance or attempt to add or detract from the original order made."

In **Ahmed Kawooya Kaigu vs Bangu Aggrey Fred, Civil Appeal No. 03 of 2007 (COA),** the Court went further and held thus;

"Rule 36(1) and (2) of the CAR (the equivalent our Section 27(1) and (2) Civil Procedure Act) entitles the Court to correct its judgments where there are found clerical or mathematical

mistakes or accidental slips. The error or omission must be an error in expressing the manifest intention of the Court. Court cannot correct a mistake of its own in law or otherwise, even when apparent on the record. Under the slip rule, Court cannot correct a mistake arising from its own misunderstanding of the law ……."

From the above decision I am persuaded to infer that **'slip rule'** should not be used to smuggle an appeal to the same Court to hear an appeal on its own decision, so to say, such rule must therefore be applied with caution.

Regarding the time the applicant has taken in bringing this application to Court from 11/05/2012, to 21/07/2017, Mr Jogo Tabu Peter had cited Section 35(1)(a) of the Civil Procedure Act, arguing that executable orders and decrees of Court have a timeline of twelve (12) years' validity from the date of issuance and that the orders complained of by the applicant are orders of 2003 which are now more than fourteen (14) years old from the date such orders were made. Counsel submitted that the applicant is trying to smuggle into the Court's system an otherwise stale case by invoking the slip rule enshrined under Section 99 of the Civil Procedure Act.

Considering the checkered history this case and other files within its category took from the file being sent to Kampala (Land Division Registry) in 2008, or thereabouts, until this case file was returned to Gulu among others by the office of the Chief Registrar in 2012, I feel that the applicant cannot be blamed for any inordinate delay although this Hon. Court feels that a period of five (5) years and two (2) months from 11/05/2012, to 21/07/2017, would clearly point to the applicant being accused of dilatory conduct in an application of this nature.

Be that as it may, this Hon. Court feels that the applicant should not be penalized for this delay while the Court officials are also guilty of delays in providing the certified records of proceedings and the ruling in MA 0066 of 2003, and the disappearance of the case files from Gulu High Court Registry temporarily between 2008 – 2012 or thereabout.

In the end, after carefully considering all the submissions and authorities cited in support of this application and all the issues raised and argued in this application, I find no merits in this application which I hereby dismiss with costs to the 1st respondent to be paid by the applicant.

It is hereby directed!

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Hon. Justice Vincent Okwanga

Judge

23rd February, 2018