

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**CIVIL APPEAL NO. 25 OF 2018**

**MUGISHA BOSCO** ::: **APPELLANT**

**VERSUS**

**MUYAMBI ANGELO** ::: **RESPONDENT**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**JUDGMENT**

1. I have carefully looked at the entirety of the court record including pleadings and submissions of the parties in this appeal.
2. The trial magistrate dismissed the Appellant’s suit under O.26r.2(1) of the CPR for failure to pay four million shillings he had ordered the Appellant to pay as security for costs. This dismissal was on the first adjournment after the order to pay the security and there was no further adjournment to enable the Appellant find the money or hear from him.
3. In my discernment, I find that although security for costs is provided under the CPR, the trial magistrate should have been mindful that the failure to pay by the Appellant was likely to be due to incapacity so to pay.
4. I am inclined to consider that in dismissing the Appellant’s suit on account of costs, the trial magistrate used the law as a technicality to defeat substantive justice which is provided under Article 126 of the Constitution.

5. The trial magistrate had several options before dismissing the suit. For example he could have put all the parties on a last adjournment notice, required the Appellant to appear and show cause why the suit should not be dismissed or why he did not pay the security for costs earlier directed. By disregarding all these options, the trial magistrate erred in law and fact and was not alive to the tenets of substantive justice as envisaged in article 126 of the constitution.
6. The dismissal on 26 February 2018 is particularly erroneous when you consider that on 23 February 2018, the trial magistrate fixed the Appellant's application for leave to appeal for 19 March 2018. It looks like the dismissal was intended to make moot both the application for leave to appeal which the trial magistrate proceeded to allow later and this appeal in this court too.
7. By fixing the date for hearing the application for leave to appeal, the trial magistrate should have halted the dismissal to enable the Appellant pursue his appeal sufficiently and competently. The dismissal was, in the circumstances of this case, against the interest of justice and prejudicial to the Appellant, regardless that he was granted leave to appeal. Accordingly ground 1 of the appeal succeeds.
8. It is, in my view less about dismissing under the wrong subsection of the law or awarding costs. Award of costs is within the trial magistrate's trial discretion and citing a wrong subsection is a minor technical error that does not affect substantive trial justice. Ground 2 is denied. Ground 3 is allowed simply because of the reasoning for ground one above which succeeds, not as presented in appeal.
9. Based on the above, the appeal succeeds in part, ground 1 and 3 are allowed and ground 2 is dismissed and it is directed as follows:
  - i. The dismissal of the Appellant's suit no. 102 of 2017 is set aside together with all orders therein.

- ii. The said suit is reinstated and shall be fixed for hearing on the merits and *inter parte* before a trial magistrate in the lower court.
- iii. The Appellant is awarded costs in this court and in the lower court to be paid by the Respondent.

I so order.

**Lydia Mugambe.**  
**Judge**  
13<sup>th</sup> March 2020.