

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 0533 OF 2022

ARISING OUT OF MISCELLANEOUS APPLICATION NO. 82 OF 2021

ARISING FROM MISCELLANEOUS APPLICATION NO. 373 OF 2020

ARISING FROM MISCELLANEOUS APPLICATION NO. 67 OF 2020

(ARISING FROM CIVIL SUIT NO. 50 OF 2020)

DR. MEDARD BITEKYEREZO ::::::::::::::::::::APPLICANT

VERSUS

MRS. NAKACHWA FLORENCE OBIOCHA ::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under section 98 of the Civil Procedure Act, Order 26, rules 1,2 & 3 of the Civil Procedure Rules S.1 71-1 Civil procedure rules for orders that;

- i) High Court Civil Suit No. 50 of 2020 be dismissed for failure of the respondent in this application to furnish security for costs.
- ii) Costs of the application be provided for.

That respondent High Court Civil Suit No. 50 of 2020 against the Attorney and the applicant as a matter of public interest under Article 50(2) and 17(i), 40 (2) and 45 of the Constitution seeking declaratory orders.

That soon after the respondent filed Miscellaneous application No. 67 of 2020 seeking a temporary injunction to restrain the Minister of Health from renewing the applicant's Contract as member of the 7th Authority at the National drug Authority or appointing him as chair or from holding any position claiming that he is not a fit and proper person to hold such an office.

The court on 15th December, 2020 allowed the application for security for costs of 25,000,000/= to be deposited within 5 months or to provide a bank guarantee or bond within a period of two months.

The respondent filed an application for leave to appeal the ruling for security for costs and the same application was dismissed with costs. The respondent has not deposited the security for costs since then.

The applicant was represented by *Ms. Leila Katusiime* whereas the respondent was represented in spite of her former counsel *Mr. Kituuma Magala* being duly served.

The applicant proposed the following issues for determination by this court.

Whether civil suit No. 50 of 2020 should be dismissed for failure of the respondent to deposit security for costs?

The applicant filed their written submissions which this court has considered in this ruling.

DETERMINATION OF ISSUES

Whether civil suit No. 50 of 2020 should be dismissed for failure of the respondent to deposit security for costs?

The applicant counsel submitted that the respondent has failed to deposit the security for costs as ordered by court within the stipulated time. Counsel cited the case of Springs International Hotel Ltd v Angella Katatumba & Others HCCS No. 314 of 2018, where Justice Kaweesa observed that Order 26 rule 2(1) is clear and needs no further explanation. The consequence of failure to furnish security for costs within the stipulated time, is that the suit is subject to a dismissal order.

Analysis

The order for security for costs made by this court was just in the circumstances of the case since the purported case before the court was a public interest litigation trying to stop the appointment (renewal) of the respondent to the chair of National Drug Authority. The respondent had been involved in a number of suits against National Drug Authority in personal claims for her employment contract and later she decided to bring public interest litigation under HCCS No. 50 of 2020.

It is clear this was not a bonafide public interest litigation but rather an extended fight between the respondent and the applicant after losing her job at National Drug Authority. The courts should never be used by litigants to fight personal and non-legal disputes through frivolous and vexatious suits.

The respondent would have made a case or advanced reasons or justified why he was unable to pay the security for costs. Unfortunately, the respondent did not file any affidavit reply and this leave this court with only one option to dismiss the suit. The court ought, in the exercise of its discretion under Order 26 rule 2(1)

confine its focus on the efforts made by the plaintiff/respondent to meet the obligation imposed under the order to furnish security for costs.

The respondent's failure to file an affidavit in reply coupled with the obvious failure to furnish security for costs as ordered by this court leave this court with no option but to dismiss the suit. In the case of *Uganda Poultries Ltd v Rhoda Kalema & Another HCMA No. 22 of 2015* Justice Bashaija K Andrew at Land Division elaborated the procedure and consequence of failure to furnish security is that the suit is dismissed unless the plaintiff is permitted to withdraw from the suit. He further cited the case of *Banco Arabe Espanol v Bank of Uganda [1992] 2 EA 24* where he held that; *"It is common ground that the court's power to dismiss the suit under Order 23 rule 2(1) (now Order 26 rule 2(1)) is automatic upon the plaintiff's failure to comply with the order for security for costs and that court has no alternative but to dismiss the suit in the event of non-compliance with the terms of the order of furnishing of security for costs made under rule 1"*

After consideration of the circumstances of this case, I dismiss HCCS No. 50 of 2020 for failure by the respondent to furnish security for costs. The main suit is dismissed with costs. No costs are awarded for this application.

I so order.

SSEKAANA MUSA

JUDGE

14th July 2023