

5 further appeal to the Court of Appeal by the Respondent, the
Court nullified all the proceedings subsequent to the Judgment
of the LCIII Court. The Court of Appeal never mentioned the
Judgment of the District Land Tribunal in its Judgment as
having been nullified because it had not been brought to its
10 attention.

In this Application, principally anchored on section 33 of the
Judicature Act and section 98 of the CPA, the Applicant averred
that the District Land Tribunal lacked jurisdiction to hear an
15 appeal from the LCIII Court Judgment. The Applicant lodged an
affidavit in support. The Respondent did not, having been
served late.

Both parties agreed that the Land Tribunal lacked jurisdiction
20 in the matter, and urged this Court to set aside the Judgment,
given that the Court of appeal did not expressly anul it. What
therefore remained contentious was the issue of costs of the
Application.

25 Submitting for the Respondent, Learned Counsel Mr. Okello
Oryem Alfred pressed for costs, while the Applicant's counsel,
Mr. Komakech Stephen argued that each party bears its own
costs since neither party was to blame for the Tribunal
purporting to sit in appeal from the LCIII Court Judgment.
30 Learned Counsel argued that his client was unrepresented
before the Land Tribunal and therefore proceeded as a lay

5 person. Mr. Okello Oryem disagreed, contending that the Applicant was to blame for moving the Land Tribunal and should bear costs of this application.

I have considered the rival arguments, and need not repeat
10 wholly.

The default position of the law is that costs of every matter follow the event, that is, the outcome of the matter, unless court for good reason, orders otherwise. See section 27 of the CPA.

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In the present matter, both parties agree that the Tribunal lacked jurisdiction in the matter before it. However, the Court of Appeal did not annul the proceedings before the Tribunal, because neither party drew its attention to it. In a matter such
20 as the present, case law offer good guidance.

It has been held by the apex Court in this country that where a fault in a particular proceeding lies squarely with the court, no party should be penalized in costs and that the correct thing to do in such a case is that each party bears its own costs. **See: Mohammed Mohammed Vs. Roko Construction Ltd, Civil Appeal No. 01 of 2013**, where the Supreme Court, after holding that the Coram of the court of appeal that delivered the final Judgment in the appeal had a 'stranger'/ member who never
25 participated in the hearing of the appeal and hence the
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5 Judgment could not stand, being illegal, Court set aside the orders of the court of appeal, ordered for return of the matter to the Court of Appeal for the Court to constitute “a suitable different Coram to hear and decide the appeal in accordance with the established procedures.”

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On the issue of costs, the Supreme Court stated thus, “***In the circumstances of this Appeal where the Court of Appeal is to blame, we order that each party should bear their own costs.***” (Underlining is for emphasis.)

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The same approach was taken by the Supreme Court in the case of **Komakech Geoffrey & M/s Victoria Advocates Vs. Rose Akol Okullo, Electoral Commission and Among Annet Anita, Civil Appeal No. 21 of 2021**, where after holding that the Court of Appeal was not duly constituted when only two members of the Court had heard the matter regarding why the appellants (lawyers) should not personally bear costs of the High Court election petition, and an application for striking out the appeal of their client (Annet Anita Among). There, the Supreme Court held (*inter alia*) that **the application for striking out the appeal had been decided by the Court of Appeal without Coram**, and thus the order that costs be personally borne by the Appellants would also be set aside. The Court also ordered that the Motion (seeking to strike out the election appeal) be heard afresh by the Court of Appeal before a proper Coram. On

5 the issue of costs before the Supreme Court, it held, "***We make no order as to costs because the appeal arises partly from Court of Appeal error to which the Appellants contributed by failing to object to the hearing of the Motion (by Court of Appeal) for lack of Coram.***"

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The above decisions therefore show the consistent approach of the Superior court on costs where neither party is to blame for illegality in the decision of a court.

15 For the foregoing reasons, and given the special circumstances of this application, it is only fair and just that each party bears its own costs of this Application. Accordingly, the Judgment of Gulu District Land Tribunal given in Civil Appeal No. 14 of 2005 is set aside, in the exercise of this Court's powers under section
20 33 of the Judicature Act and section 98 of the CPA, with an order that each party bears its own costs.

I so Order.

25 Delivered, dated and signed in open court this 28th February, 2023.



George Okello 28/2/2023
George Okello

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JUDGE HIGH COURT

5 Ruling read in Court in the presence of;

Mr. Okello Oryem Alfred, Counsel for the Respondent.

Mr. Komakech Stephen, Counsel for the Applicant.

The Applicant in court.

10 Ms. Grace Avola, Court Clerk.



George Okello 28/2/2023

George Okello

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JUDGE HIGH COURT