

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

CIVIL APPEAL NO. 59 OF 2020

(Arising from LDC Magistrates Court Civil Suit No. 063 OF 2019)

BDE CONSULT LIMITED ===== APPELLANT

VERSUS

UGANDA REGISTRATION SERVICE BUREAU ===== RESPONDENT

BEFORE: HON JUSTICE EMMANUEL BAGUMA

JUDGMENT.

Background.

The appellant formerly plaintiff filed civil suit No. 63 of 2019 on 21st May 2019 against the Respondent formerly defendant at LDC Magistrates court for recovery of UGX. 16,112,000/= (Sixteen million one hundred and twelve thousand shillings), general damages and costs of the suit. The defendants filed a written statement of defence on 18th July 2019 and in their defence stated that in paragraph 10(C) that the payment was effected to the Plaintiff on 20th June 2019 to the tune of Ug 15,292,746 less withholding tax which was remitted directly to Uganda Revenue Authority. In reply to the written statement of defence filed on 26th July 2019 under paragraph 2, the plaintiff acknowledged receipt of payment. When the matter came up on 15th November 2019, counsel for the plaintiff informed court that the claim had been settled and but he prayed for costs since the debt was paid when the matter was already in court.

The trial Court in a ruling delivered on 2nd September 2019 dismissed the claim for costs. The appellant/Plaintiff being dissatisfied with the ruling and orders of the trial court appealed to this court on the following grounds;-

Grounds of appeal.

Initially the appellant filed two ground of appeal in his memorandum of appeal to wit;-

- 1. The learned trial Magistrate erred in law and fact when she exercised her discretion injudiciously and held that the appellant was not entitled to costs in the circumstances of the case.*
- 2. The learned trial Magistrate erred in law and fact when she reasoned basing on alleged material facts of the contract between the parties when she did not formerly receive evidence on the same and therefore arriving at a wrong conclusion.*

However, at hearing the appellant's counsel abandoned ground 2 and intimated that he will only argue ground 1.

Legal representation.

Mr. Tumwesigye Wycliff Elisah represented the Appellant while Mr. Dennis Birungi together with Ms Stella Muheki represented the Respondent.

At the hearing of this appeal both counsel agreed to file written submissions and their details are on record.

Submissions by counsel for the Appellant.

Ground No. 1

The learned trial Magistrate erred in law and fact when she exercised her discretion injudiciously and held that the appellant was not entitled to costs in the circumstances of the case.

Counsel submitted that **section 27(1) of the Civil Procedure Act, Cap 71** provides that;

“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 and 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”.

Counsel submitted that the general rule is that “costs follow the event” that the successful party is entitled to an order for costs. He referred to the case of **Impress Ing. Fortunato Federic Vs Irene Wabwire (suing by her next friend Julius Wambette) SCCA No. 03 of 2000** where court held that;

“the effect of the provisions of section 27 in question of the Civil Procedure Act is that the judge or court dealing with the issue in any suit, action, cause or matter has absolute discretion to determine by whom and to what extent such costs are to be paid. Of course, like all judicial discretion, the discretion on costs must be exercised judiciously. How a judge exercises that discretion depends on the facts of each case. The factors which determine the exercise of the discretion in favour of one party and against another in a case do not necessarily apply to any other case”.

Counsel submitted that in the instant case the Respondent/Defendant were issued with a notice of intention to sue cum demand notice on 15th May 2019 but the Respondents ignored the same hence the filing of Civil Suit No. 063 of 2019. Attempts to serve the Respondents directly proved futile which prompted the Appellant to use substituted service. The Respondent cleared the debt after the filing of the suit. Counsel contented that the Respondent was liable to pay costs of the suit since from the beginning he did nothing to mitigate the loss.

Submissions by counsel for the Respondent.

Counsel for the Respondent referred to section 27 of the CPA and the case of **Impress Ing. Fortunato Federic Vs Irene Wabwire (suing by her next friend Julius Wambette) SCCA No. 03 of 2000** as referred to by counsel for the Appellant but emphasized that the judicial officer has discretion and the term “costs follow the event” is not absolute and is subject to court’s discretion.

Counsel referred to the case of **Muwanga Kivumbi Vs Attorney General SCCA No. 06 of 2011** where court held that;

“the principles which can be deduced from section 27 of the CPA are that;-

- a. The award of costs is left to the discretion of the court.*

- b. Costs normally follow the event- the general rule is that successful party will be awarded costs.*
- c. Just as in other areas of the law where court is empowered to make decisions the court' discretion must be exercised judiciously”.*

Counsel submitted that the trial Magistrate gave reasons based on the facts of the case as to why she did not award costs of the suit to the Appellant. She stated that the debt was paid within a period of one month from the time services were delivered. That she addressed her mind to the bureaucracy in procurement of services in public entities. She also noted that the contract was entered into in March and the appellant filed this suit in May 2019 just two months after the contract.

The trial Magistrate further noted that the Respondent/Defendant paid the debt due before they could even be served with summons.

Counsel concluded that the trial Magistrate properly exercised her discretion in declining to allow the costs in the lower court.

Analysis of court.

Section 27 of the CPA provides that;

“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 and 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.”

In the case of **Besigye Kizza vs. Museveni Yoweri Kaguta and Electoral Commission, Presidential Election Petition No. 1 of 2001** Odoki (CJ) stated that,;

“It is well settled that costs follow the event unless the court orders otherwise for good reason. The discretion accorded to the court to deny a successful party costs of litigation must be exercised judicially and for good cause. Costs are an indemnity to compensate the successful litigant the expenses incurred during the litigation. Costs are not intended to be punitive but a successful litigant may be deprived of his costs only in exceptional circumstances”. (See Wambugu vs. Public Service Commission [1972] E.A. 296).

According to **Duhaime’s Law Dictionary**, (www.duhaime.org) the phrase ‘costs follow the event’ means that: “an award of costs will generally flow with the result of litigation; the successful party being entitled to an order for costs against the unsuccessful party.”

In other words, the general rule is that a successful party will be awarded costs. This was emphasized by Odoki Ag. JSC in the case of **Iyamuleme David vs. AG SCCA NO.4 of 2013** where he held *inter alia* that:

“While it is trite law that the award of costs is on the discretion of the Court, the award of costs must follow the event unless the Court, for good reasons orders otherwise, according to Section 27 of the Civil Procedure Act”.

I am aware that a successful party is entitled to costs and that costs follow the event. I am also alive to the fact that discretion on costs must be exercised judiciously.

In the instant case the trial court based on the facts and circumstances of the Civil Suit No. 063 of 2019 to deny costs. The trial court in its ruling gave reasons for denying costs.

I have had the opportunity to read the lower court file and the ruling, basing on the facts of this case, civil suit No. 063 of 2019 was filed on 21st May 2019, defence was filed on 18th July 2019 and indicated that they had paid the claimed money by 20th June 2019 a fact that was admitted by the applicant in his reply to the written statement of defence filed on 26th July 2019. The Respondent in their written statement of defence stated that the payments were initiated through a local purchase order which caused a delay in payment. This formed the basis for the trial court to decline to award costs.

It is my considered view and opinion that I don't have any reason whatsoever to alter the findings of the trial court.

This ground of appeal fails.

Conclusion.

In the final analysis, the appeal is fails with the following orders.

1. The appeal is hereby dismissed.
2. Given the circumstances of this case, no order as to costs.

Dated, signed, sealed and delivered by email on this **8th** day of **May** 2023.

Emmanuel Baguma

Judge.

