

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**Coram: Owiny Dollo CJ, Arach Amoko, Opio Aweri, Mwondha
Muhanguzi JJSC**

CIVIL APPEAL No. 10 of 2019

BETWEEN

PHENNY MWESIGWAAPPELLANT

AND

PETRO UGANDA LIMITED.....RESPONDENT

RULING OF THE COURT

Counsel for the successful party /judgment creditor, wrote to the Registrar Supreme Court of Uganda on the 10th May 2022, drawing the attention of this court, stating that, “on the 26th April 2022, this court delivered the judgment in Civil Appeal No. 10 of 2019. That they wrote a letter to counsel for the appellant requesting them to approve the Decree extracted so that the same is filed before this Court for endorsement and sealing. On the same date 10th May 2022, they received a letter from Counsel for the appellant/judgment debtor forwarding another version of the Decree omitting two orders of the High Court decreed by the trial judge which orders were confirmed by both the Court of Appeal and Supreme Court. (The copies of the letters and Decrees as extracted by both Counsel were enclosed)

Counsel for the judgment creditor /successful party/respondent stated in the letter that the purpose of the letter was to bring this matter to the Court's attention that the judgment debtor did decline to endorse the Decree they extracted. Counsel requested that the parties be summoned under the provision of Rule 34(2) of the Supreme Court Rules to settle the Decree since they have failed to

agree.

Rule 34(2) of the Court Rules provides that;

Where a decision of the Court was given in an application or appeal of a Civil nature-

(a) the party who has been substantially successful Shall as soon as practicable, prepare a draft of the order and shall submit it for the approval of the other parties;

(b) if all parties approve the draft, the order shall unless the presiding officer/judge otherwise directs be in accordance with it;

(c) if the parties do not agree on the form of the order, or if there is unreasonable delay in the preparation or approval of a draft, the form of the order shall be settled by the presiding judge or by any judge who sat at the hearing as the presiding judge shall direct after giving all parties an opportunity of being heard;

(d).....

On the 8th of June 2022, both parties were Summoned and they appeared before this Court as per the Rule cited. They made oral submissions. I considered both counsel submissions, reviewed the draft decree which the successful party extracted and reviewed the varied decree the judgment debtor extracted. I also reviewed the judgment which was delivered on the 14th April 2022.

It was clear that the two orders embodied in the decision of the High Court were inadvertently omitted at pages 25 and 26. I have to state that there was no intention to vary the orders of the trial court as confirmed by the Court of appeal and upheld by this Court. The judgment of this Court delivered as earlier stated is clear at pages 25 and 26 in that, it stated, ".... the orders made by the trial Court as confirmed by the Court of Appeal are upheld." It follows therefore that the wording " for avoidance of doubt " when read together with the

upholding of the trial Court orders by this Court as confirmed by the Court of Appeal was intended to mean and include all the orders made by the High court. These orders were; (i) the unpaid fuel on DFCU Bank A/C of Shs 10,055,768/= (2) Unutilized Advance Rent of Shs 54,908,251/=.

When the judgment of the Supreme Court is read, it is clear that the appellant lost on all the six grounds so the avoidance of doubt could not have had the intention of varying the trial Court orders as confirmed by the Court of Appeal and upheld by this Court.

I am unable to accept Counsel for the Appellant /judgment debtor's submission, that the two orders of the High Court which were omitted after stating "for avoidance of doubt " should be disregarded as they were not for discussion before the Supreme Court. I concur with counsel for the judgment creditor's submission that the judgment debtor's counsel just read one page of the judgment. As already stated, all the six grounds of appeal were disposed of in the negative and cannot be understood in isolation of the trial Court judgment, the Court of Appeal judgment and orders which this Court upheld. So, all three judgments have to be read together not in isolation.

Besides, the submission of Counsel for the judgment debtor/appellant is Superfluous when he stated that the two orders were not included in the judgment of the Supreme Court. It's not correct because at page 3 of the judgment, they were stated. Besides, the overlying fact is that all the orders of the trial Court as confirmed by the Court of Appeal were upheld. Also, I find it ridiculous for counsel to oppose the words "to the respondent" with costs. The law is clear under Section 27 of the Civil Procedure Act that costs follow the event. It was obvious that the successful party was the respondent so it cannot be fatal inserting it.

Having stated the above and exercising the duty of this Court under Rule 34(2) (c) which provides, "**if the parties do not agree on the form of the order or if there is unreasonable delay in the**

preparation of approval of the draft, the form of the order shall be settled by the presiding judge or by any judge who sat at the hearing as the presiding judge shall direct after giving all parties an opportunity of being heard. (Emphasis is mine)

After careful consideration of both draft extracts and the letter written to the Registrar dated 10th May 2022 by Counsel for the successful party/Respondent in **Civil Appeal No.10 of 2019, Phenny Mwesigwa v Petro Uganda Limited**, and upon consideration of both Counsel oral submissions, the words "avoidance of doubt" did not intend to change or vary the orders of the trial Court as confirmed by the Court of Appeal and upheld by this Court. The two orders were inadvertently omitted at page 25 of the judgment.

The form of the decree is as follows: -

(i) Appeal dismissed with costs of this Court and the Courts below.

(ii) The orders made by the trial Court as confirmed by the Court of Appeal are upheld and are as follows: - 

(1) The appellant pays the Respondent Ushs 471,036,120/= in special damages for unpaid fuel supplies.

(2) The Appellant pays the Respondent Ushs 10,055,768/= in special damages for unpaid fuel on DFCU A/C.

(3) The appellant pays the Respondent of Ug Shs54,908, 251/= in special damages for unutilized advance rent.

(4) The Appellant returns the equipment of the respondent that was outstanding.

(5) The Appellant pays nominal damages for breach of contract in sum of Ug Shs 2,000,000/=

(6) Interest of 21% per annum from 27th August 2008 on the special

damages until payment in full.

(7) Interest of 8% per annum on the nominal damages from the date of judgment by the High Court until payment in full.

(8) The Appellant pays 2/3 of the costs of the High Court on account of failure to provide for written agreements, an act of poor corporate governance.

Dated at Kampala on this 22nd day of June 2022



MWONDHA

JUSTICE OF THE SUPREME COURT