

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA; AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT No. 414 OF 2012**

**KAMYUKA BRUHAN ..... PLAINTIFF**

*VERSUS*

**HON. FLORENCE NAMAYANJA ..... DEFENDANT**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO**

**JUDGMENT**

The Plaintiff's claim against the Defendant in this suit was for the recovery of a piece of land, being a portion of, land comprised in Busiro Block 226 Plot No. 337 Kisimbili, which he had purchased. The Defendant however failed to sign mutation form to enable the Plaintiff curve out the suit land; thus, leading to the suit in which the Plaintiff also sought an order that the Defendant withdraws the caveat lodged on the suit property, as well as general damages, and costs. However, after the pleadings had closed, and the suit conferencing had taken place, but before the hearing of the suit had commenced, the parties executed a Consent Judgment in favour of the Plaintiff, sealed by the Registrar of this Court, in the terms that the Defendant: –

- (i) acknowledges the Plaintiff's proprietary interest in the suit property.
- (ii) undertakes to execute the requisite transfer instrument, and mutation form, to enable the Plaintiff register the suit land in his name.
- (iii) obliges herself to lift the caveat she had lodged on the title to the land in which the suit land is comprised.

The Plaintiff abandoned the claim for general damages; but there was no meeting of the minds of the parties hereto with regard to the issue of costs of the suit. The Plaintiff insists that the Defendant pays the costs of the suit, while the Defendant urges that the parties bear their respective costs of the suit. The parties hold irreconcilable views on this matter; and so, they have left it to Court to determine. Pursuant to this, the parties' respective Counsels have filed written submissions to back up the parties' adverse contention. Accordingly, the resolution of this

single point will constitute the sole decided decree of the Court, to be read together with the Consent Judgment. Section 27 of the Civil Procedure Act (Cap. 71, 200 Edn.) provides for costs as follows: –

*"(1) 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.*

*(2) The fact that the court or the judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in section (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.*

*(3) The court or judge may give interest on costs at any rate not exceeding 6 per cent per year, and the interest shall be added to the costs and shall be recoverable as such."*

From the provisions of the law reproduced above, it is quite clear, first, that the general principle is that award of costs by the Court or a Judge is a discretionary mandate unless there is some provision of the law to the contrary. Second, the award of costs should ordinarily follow the event; which is a default provision that a successful litigant is entitled to recover the costs such person has incurred in the pursuit of a suit, save where there exists some good reason to deny the successful litigant the recovery of such costs. It follows from this then that in the exercise of this statutory discretion, the Judge or Court is under duty to act judiciously. A person who is compelled by the action of another to become a litigant in Court, and who is eventually successful, deserves to recover from the other person such costs as arise from or are reasonably incidental to the suit.

In exercising the discretion conferred upon me regarding the award of costs in the instant suit, I am enjoined to take cognizance of the law and the facts of the case. The first point of consideration is the default provision in section 27 (2) of the Civil Procedure Act that costs follow the event. In *Kiska Ltd. vs De Angelis [1969]1 E.A. 6*, Court expounded the default provision, that costs follow the event. Based on the default provision, the Plaintiff herein who is the successful party is entitled to recover his costs of the suit. However, as was pointed out in *Departed Asians Property Custodian Board vs Jaffer Brothers [1999]1 E.A. 12*, Court enjoys

the discretion to award or deny the award of costs to a party to a suit; regardless of whether such party is the successful litigant. This qualifies the default provision of the law.

In the exercise of this discretion, a Judge or Court has to be guided by judicial considerations. Accordingly then, I must consider if there is some ground that would compel me to depart from the default provision. In the English case of *Donald Campbell vs Pollak [1927] A.C. 732*, followed in the Court of Appeal for East Africa decision in *Devram Nanji Dattani vs. Haridas Kalidas Dawda (1949)16 E.A.C.A. 35*, Lord Atkinson stated at p. 813 that: –

*"It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts. If, however, there be, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with his discretion in that instance."*

As is evident from the annexures to the plaint in the suit before me, and the scheduling notes, the parties had prior to the filing of the suit unsuccessfully engaged themselves, through correspondences, in a bid to resolve the points of contention between them. At first, the Defendant denied that the Plaintiff has a registrable proprietary interest in the suit property; and only conceded after several endeavours by the Plaintiff to assert his right over the property. Even after this concession, and the Plaintiff presented her with the requisite mutation form to facilitate his desired registration as owner of the suit property, the Defendant neglected for over a year to vacate the caveat she had lodged on the title, despite repeated demands by the Plaintiff to have this done. Indeed, this suit was an act of last resort by the Plaintiff upon realising the futility of the pursuit of amicable resolution of the dispute between them.

In *Ritter vs Godfrey [1919] All E.R. 714*, which was followed in the case of *J. B. Kohli & Others vs Bachulal Popatal [1964]1 E.A. 219*, the Court clarified on the manner of exercise of discretion as follows: –

*"... this discretion, like any other discretion, must of course be exercised judicially and the judge ought not to exercise it against the successful party except for some reason connected with the case."*

Had it not been for the Defendant's obstinacy and uncompromising stance, first by denying the Plaintiff's title, and then neglecting to vacate the caveat she had lodged on the mother title, matters would not have gone this far and ended up with the suit. It was this intransigence by the Defendant that caused the Plaintiff to incur the costs of the suit he now seeks to recover. I have discerned nothing, attributable to the conduct of the Plaintiff that would disentitle him from the recovery of his costs of the suit; hence, it is proper that the Defendant should pay the Plaintiff's costs of the suit. I therefore exercise the discretion vested in me in the Plaintiff's favour; and accordingly order the Defendant to pay him his costs of the suit.

A handwritten signature in black ink, appearing to read 'Alfonse Chigamoy Owiny - Dollo'. The signature is fluid and cursive, with a large initial 'A' and 'O'.

Alfonse Chigamoy Owiny – Dollo  
**JUDGE**

**28 – 05 – 2014**