

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

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**CORAM: HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE C.N.B. KITUMBA, JA
HON. JUSTICE C.K. BYAMUGISHA, JA**

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ELECTION PETITION APPLICATION NO.35 OF 2007

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1. **HON. ROSE AKOL OKULLO**
 2. **ELECTORAL COMMISSION.....APPLICANTS**

V E R S U S

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AMONG ANNET ANITA.....RESPONDENT

(Arising from Election Petition Appeal No.10 of 2007)

RULING ON COSTS:

25 The ruling of the court in this case was delivered on 28th March 2008. Though
Hon. Justice C.K. Byamugisha concurred in the ruling, she disagreed with us on
who should pay the costs of the appeal. It is for that reason that she did not sign
the ruling of the court. She also did not wish to participate in the proceedings
where we ordered the advocates for the respondent to appear before us to show
30 cause why they should not be ordered to pay the costs.

At the hearing, Mr. Komakech, counsel for the respondent presented a written
submission on behalf of his firm. In that document, Mr. Komakech who had
signed the written submission on behalf of the firm, Victoria Advocates and
35 Legal Consultants, challenges the finding of the court as to who was responsible
for the dismissal of the respondents appeal. Mr. Komakech alleged that his

client was at fault because she was the one who had assembled all the documents upon which the advocates relied in filing both the appeal and the reply to this application. In his view, she should be the one to pay the costs.

5 We gave the respondent opportunity to respond to her advocate's submission. She stated that shortly after judgment was delivered in Soroti High Court, her lawyers convinced her that there would be merit in filing an appeal. She then instructed them to file the appeal. From then, she left the lawyers to handle the procedure professionally. According to her, when she appeared in court on 7th
10 February 2008, she believed that her appeal was going to be heard only to be confronted with this application which her advocates had not informed her about. She heard the court asking her advocate why he had not applied for extension of time and was surprised to hear her advocate reject an opportunity to do so which the court indicated it would be prepared to grant. She was
15 neither aware that false affidavits had been filed nor was she conversant with the procedure to be followed in filing the appeal or rebutting an application challenging the validity of her appeal. The advocate did everything without consulting her and she assumed they were doing the right thing. She stated that she had come to court to seek justice but justice was denied to her due to the
20 negligence of her lawyers. She prayed that the mistakes of her lawyers should not be visited on her and asked that they should pay the costs of the petition and the appeal.

Mr. Muwanga, who appeared for the 1st applicant submitted that it was not
25 open for counsel or the respondent to attack the ruling of the court as he had done, because this hearing was not an appeal against the ruling of the court. He reiterated that the advocates of the respondent had been grossly negligent and should be ordered to pay the costs resulting from their negligence.

Mr. Komakech in reply submitted that it was the respondent who was all along at fault and who should pay the costs. He gave three reasons:-

(a) It was her who prepared all documents relied upon in the reply to the application and must be held responsible for any errors and lies therein.

5 (b) She was telling lies to the court when she said that she was not aware of this application because

- She deponed and signed documents in support thereof.

- She was the one who called Mr. Amuria, the Deputy Registrar Soroti High Court, to come to Kampala to swear the false affidavit
10 in support of the application.

- She appeared in this court in December 2007 when this application was first called for hearing.

(c) She had not paid the fees of the advocates for the application and the appeal.

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Mr. Komakech also tried to put the blame on Mr. Amuria, the Deputy Registrar, High Court Soroti, whose conduct, he claimed, should first be investigated.

We were surprise that Mr. Komakech was prepared to tell the court a few more
20 lies to cover the failings and negligence of his firm. It is not true that the respondent is the one who deponed and signed documents in support of the application. We have carefully inspected the record of this application and we are unable to find any document deponed or signed by her in support of or in opposition to the application. It is only Amuria Charles and Harriet Nanyonjo, a
25 process server of M/s Victoria Advocates and Consultants, who signed the documents in support of the answer to this application.

Secondly, we see no evidence on record to show that it was the respondent who called Mr. Amuria Charles to Kampala to swear the false affidavit. Incidentally,

we were not even aware that he was purposely called to Kampala to swear the affidavit. His affidavit shows that it was deponed before a Magistrate in the Chief Magistrates Court of Soroti on 21st January 2008 in Soroti.

5 Thirdly, it is not true that the respondent appeared in this court in December 2007 in response to summons to hear this application. The court record does not bear out the claim that the application was called for hearing in December 2007. In fact the respondent's conferencing notes were not filed until 15th January 2008. It could not have been fixed for hearing before then.

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Lastly, it is of no relevance, and it is not a defence that M/s Victoria Advocates and Consultants behaved the way they did because they were allegedly not paid their fees. They accepted to represent the respondent, which they are still doing up to this moment. They are duty bound to perform the task diligently.

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In our judgment, Mr. Komakech Godfrey and his law firm of M/s Victoria Advocates and Consultants failed to show cause why they should not be condemned to pay costs of the applicants due to their gross negligence in handling the respondents appeal and the application to strike out the appeal. It is therefore ordered that they are liable to pay the costs of the petition, the appeal and the application to the applicants.

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Dated in Kampala this.....02ndday of...April.....2008.

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Hon. Justice A. Twinomujuni
JUSTICE OF APPEAL

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HON. Justice C.N.B. Kitumba
JUSTICE OF APPEAL

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Hon. Justice C.K. Byamugisha
JUSTICE OF APPEAL

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