

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0054.-2005

(From HCT-05-CV-MA-0032-1997 and CS 14/1996)

MRS. ROSEMARY RWABAJUNGUAPPELLANT
(Legal Representative of Late Rwabajungu)

vs

1. GEORGE GERMANY)
2. FRANCIS BEHUTA)..... RESPONDENTS

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

This is an appeal made under Order 46 rules 4 and 8 of the Civil Procedure Rules. It follows the decision of the Deputy Registrar to refuse to grant execution to the appellant herein in an interlocutory application.

On 22nd February 2000 a preliminary objection to the proposed amendment of the plaint was upheld. The application had been made in Miscellaneous application No. 0032 of 1998. Subsequently a bill of costs was filed, taxed and allowed at Shs. 909,000/-. Suffice it to say the judgment debtor did not realize any of that money at the time. In a letter dated 11th May 2000 the Deputy Registrar addressed M/S Tumwesigye & Co. Advocates as follows:

‘I have seen a copy of your threats to Ms G. Germany & Another. Normally costs in interlocutory matters should wait the outcome of the main suit. I would advise you to keep your taxed bill until the main suit is determined.’

The main suit was duly determined and for reasons stated in the judgment parties were ordered to meet their respective costs. What is at issue here is whether the amount taxed and allowed in the wake of the interlocutory ruling is independent of the costs envisaged at the time of the judgment.

Section 27 (1) of the Civil Procedure Act, Cap 71 of the Laws of Uganda states:

‘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 directions for the purposes aforesaid.’

Learned counsel for the appellant has drawn my attention to Odgers on Pleading and Practice, 22nd edition, at page 381 where it is stated that costs in interlocutory matter could be ordered to be paid forthwith or to abide the outcome of the main suit. While I agree it could have been possible for the appellant to recover the costs when they were taxed and allowed, this was not the case probably because of the letter of 11th May 2000 aforesaid. That letter advised the appellant herein to keep the taxed bill of costs until the main suit was determined. That certainly was timely. This court in its judgment gave reasons why the appellant could not recover costs and those reasons remain valid. In Devram Nanji Dattani vs Haridas Kulidas Dawda (1949) 16 EACA 35 the Court of Appeal for Eastern Africa held that a successful defendant who after all is brought into court against his will can only be deprived of his costs when it is shown that his conduct, either prior to or during the course of the action, has led the litigation which but for his own conduct might have been averted. Doubtless the ruling is part of the case that was finally determined. It would be absurd at this moment in time, with the background of the verdict, if any costs were to be recovered let alone by the appellant herein.

Consequently I would dismiss this appeal on all grounds with no order to costs, given the complexity of the issue.

P. K. Mugamba

Judge

1st September 2005