**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBALE**

**HCT-04-CV-MA-207-2012**

**(Arising from Misc. Cause No. 0014 of 2012)**

1. **NATHAN WOLUKAWU WANDA**
2. **BALI BALI PANDE ISAAC**
3. **KHARONO LYDIA**
4. **SOITI ROBERT……APPLICANTS**

**VERSUS**

**ATTORNEY GENERAL OF THE**

**GOVERNMENT OF UGANDA……..RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

On 4th September 2013, when this application was called for hearing, **Byamugisha Ferdinard** appearing for applicants, informed court that the Respondents represented by Resident State Attorney **Mr. Masaba**, who was in court, had a report to make about the case, which could affect the progress.

**Mr. Masaba**, then informed court that the subject matter of this application was a proposed project to construct a Dam at the proposed site. This project was time bound and had been scheduled to commence by February 2013. He reported that

this project has been over taken by passage of time, and it has been re-allocated to another site. There is therefore no threat to the applicants, and the application was at this stage a mere waste of time. He provided a letter from the Minister of Water and Environment dated May 2nd 2013 informing the chairperson of Mbale LC.V that the project has been abandoned. He prayed that court dismisses the claim.
In reply counsel **Byamugisha** confirmed the position above. He however prayed that the matter be withdrawn from court and costs be provided to applicants.

In cross reply **Mr. Masaba** opposed the prayer for costs. He attacked the application which he said was premised on a decision which the applicants suspected would prejudice their rights, yet respondents were merely carrying out a feasibility study. He argued that if the matter had gone through a full trial there would be nothing to review.

He argued that it's unjust to grant costs to applicants. He instead prayed that the costs be granted to respondents.

Court granted to prayer to have the application withdrawn from court, and adjourned for a ruling on the issue of costs.

According to section 27 (1) CPA,

> "*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 incidental to all suits shall be in the discretion of the court or Judge….*"

The discretion is given to the trial Judge to consider the case and justly determine which party should be entitled to costs.

According to **Richard Kuloba** in his book ***Hints on Civil Procedure 2nd Edn. Page 94-95***", "costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action." These costs in most cases follow the "event".

The event means the result of all proceedings incidental to the litigation. The event is the result of the entire litigation.

Applying the above, to the facts before me, it is on record that the application did not progress, because the matter was overtaken by changes on the ground, which in a way operated to favour the applicants. The applicants had come to court and filed Misc. Cause 0014/2012, seeking for Judicial Review remedies, against the respondent; for certiorari, prohibition, and an injunction restraining the Respondents or its agents from implementing/enforcing the Respondent's project.

They also filed Misc. Application No.207/2012 arising from Misc. Cause 0014/2012, which was an application for a temporary order of prohibition against the Respondents.

The matters first appeared in court on 4th September, 2013, whereby court was requested to have the matter withdrawn, on account of the facts and reasons already stated above.

Is any of the parties entitled to recover costs in these circumstances?

In answering the above question, I will borrow leaf from the New South Wales Jurisprudence on this subject, whereby in the case of ***Pty Ltd v. Agostine Jarret Pty Ltd (2007) NSWSC 971***

> "*Sometimes however there is no event…..rules provide that where a plaintiff discontinues without the consent of the defendant, or where the plaintiff's claim is dismissed the defendant is entitled to costs*."

In this case both parties consented before court that the application should be withdrawn. Further guidance is laid down in another New South Wales case of ***Harkens v. Harkens (No.2) 2012 NSWSC 35 (18)*** that;

> "*The general principle in relation to costs where proceedings are determined without a hearing on the merits and where it cannot be said that one party has simply capitulated, is that courts make no order as to costs; with the intent that each party bear its own costs unless it can be seen that one party has acted unreasonably in bringing or defending the proceedings*."

The above guidelines are useful in helping me to determine whether any of the parties above is entitled to costs.

This case is in the category of the cases discussed in the ***Harkens v. Harkens*** holding. These proceedings were terminated without going into a full hearing. There is therefore no justification for granting costs to any of the parties above. Each party should bear this own costs. I so order.

**Henry I. Kawesa**

**JUDGE**

**17.10.2013**

**NB**

This ruling affects the proceedings in both HCY-04-CV-MA.207/12 and HCT-04-CV-MC-0014-2012- which was also withdrawn subject to costs.

**Henry I. Kawesa**

**JUDGE**

**17.10.2013**