

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL REVISION NO. 10 OF 2014**  
**(ARISING FROM CIVIL APPEAL NO.026 OF 2013)**  
**(ARISING FROM NABWERU CHIEF MAGISTRATE COURT**  
**CIVIL SUIT NO.26 OF 2008)**

**KIVUMBI**

**PAUL:.....APPLICANT**

**VERSUS**

**1. NAMUGENYI ZULAH**

**2. EDI SAALI**

**3. SENOGA**

**HAMIDU:.....RESPONDETS**

**BEFORE: THE HON. LADY JUSTICE ELIZABETH MUSOKE**

**RULING**

This is an application brought under Section 99 of the Civil Procedure Act and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules seeking for orders that;

1. Court be pleased to correct the errors in the judgment of court when it held that on the 29<sup>th</sup> August 2014 when the plaintiff gave evidence, it was a Session Magistrate Grade 1 who presided over the proceedings.

2. It was an error in the judgment of court that the costs in Nabweru Chief Magistrate Court Civil Suit No. 26 of 2008 were awarded to the respondents when they did not cross appeal for them.

The grounds on which the application was based are contained in the affidavit of Kivumbi Paul filed on 5<sup>th</sup>/09/2014 attached to the application but briefly are:

1. The judgment of court erroneously stated that on the 29<sup>th</sup> October 2010 when the plaintiff led evidence, it was the Session Trial Magistrate Grade One who presided over the proceedings when in fact it was the Chief Magistrate herself, Her Worship Joy K. Bahinguza who presided over the proceedings. The typed proceedings erroneously represented the position which was not supported by the record of the lower court.
2. The court upheld the decision of the Trial Magistrate in the judgment and dismissed the appeal awarding costs to the respondent on appeal and in the lower court.
3. The conclusion of court provides a contradiction where on one hand the Trial Magistrate awarded costs to the applicant in the lower court but the High Court appears to reverse that decision without a cross appeal to that effect by the

respondent and without the applicant being heard on the same.

In his submissions, Counsel for the applicant stated that the law applicable for correction of errors in judgments is Section 99 of the Civil Procedure Act. He referred court to ***Villabhoas Karsandas Raininga Vs Mansukhlal Jivraj and Others [1965] EA 700***, where court held that;

- 1. The High Court has powers under S. 99 of the Civil Procedure Act to amend its decision whether before or after issuance of formal orders.**
- 2. The court in correcting or rectifying the errors in the judgment will be giving effect to the intention of the court at the time when the judgment was given or satisfied that it is proper and equitable to order a rectification.**
- 3. That in correcting mistakes in judgments the High Court is not functus officio.**

Counsel further contended that there was evidence by the applicant in his sworn affidavit dated 05<sup>th</sup> September 2014 that he had attended court on the 29<sup>th</sup> October 2010 before Her Worship Mrs. Joy K. Bahinguza, then Chief Magistrate of Naberwu Chief

Magistrate's Court and not before a Session Magistrate Grade One.

Counsel added that if the High Court is in doubt, it should seek clarification from the Chief Magistrates' court at Nabweru because it's the only institution that can certify as to the correctness of its documents.

In reply, Counsel for the respondent submitted that there was no evidence to the effect that the applicant was prejudiced by what is considered to be an error. He relied on ***Mulla on the Code of Civil Procedure, Volume 1, 17<sup>th</sup> Edition at page 1631*** as cited in the case of ***Transtrac Limited Vs Damco Logistics Ltd, Misc App. No. 348 of 2012*** to state that the test to determine whether the slip or omission is accidental or not, could be gathered from the intention of the judge in preparing the judgment or order.

Counsel submitted that the intention of court was to the effect that the Session Magistrate Grade 1 had the jurisdiction to deliver the judgment in Civil Suit No.26 of 2008. He invited court to find that no evidence had been adduced to prove that there was an error in the proceedings which was overlooked, and that the court was satisfied that the order it made would still have been the same even if the matter had been brought to its attention.

I wish to clarify that once a Notice of Appeal is lodged, the court receiving the notice shall send a copy of it to the court from whose decree the appeal is preferred and that court shall

dispatch all material papers in the suit to the High Court. (See, O.43 rule 10(1) and (2) Civil Procedure Rules). I note that this was done and that there is no indication on the original copy of the record of proceedings sent from the Chief Magistrates' court Nabweru as to who presided over the session on the 29<sup>th</sup> October 2010. The record does not specify that it was the Chief Magistrate.

This court is not expected to tell who presided over the matter by just looking at the handwriting, because the respective handwritings are not known to this court. In this case, however, the applicant's counsel filed a copy of the typed proceedings of the lower court. It was specifically indicated that it was the Session Magistrate Grade One who presided over the session for the day in question. The typed proceedings are certified by the court that issued them (Chief Magistrates' court Nabweru), as the true and original copy. It is for that reason that this court based itself on them to pass its judgment. It was therefore not an error or accidental slip as court based itself on what was on record at that time to reach its decision.

The applicant in his affidavit in support of the application deponed under paragraph 3:4 that he attended court on the 29<sup>th</sup> October 2010 before Her Worship Mrs. Joy K. Bahinguza, the then Chief Magistrate Nabweru. However this information came rather late in the day, as the affidavit was sworn and filed after the judgment

the applicant intends court to amend was already passed. The court based itself on the typed record as presented by the applicant himself. The handwritten proceedings could not be of help as they did not indicate who recorded the proceedings that day or before who the same were. In any case, I have not been convinced that the alleged error was prejudicial to the applicant.

On the issue of the award of costs by the High Court to the respondent when they did not cross appeal for them, Counsel for the applicant submitted that as per Order 43 rule 2(2) of the Civil Procedure Rules, the High Court cannot rest its decision on any other ground unless the party who may be affected by the decision has had sufficient opportunity of contesting the case on that ground. Counsel concluded that the award of costs in the lower court to the respondent was an error in the judgment as the applicant was not given an opportunity to contest them, and nor did the respondents cross appeal to have the costs in the lower court awarded to them.

Counsel concluded that court has jurisdiction to rectify and correct errors in its judgment.

In reply, counsel for the respondents submitted that Section 27(1) of the Civil Procedure Act provides that the costs incidental 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 the costs are to be paid. Counsel humbly implored court to find that by awarding costs to the respondent court occasioned no error that

requires any amendment as the court has the discretion to determine who pays costs since the costs follow the event.

I have considered the rival arguments of counsel on either side. Section 27 of the Civil Procedure Act states;

***“Provided that the costs of any action, cause or other matter shall follow the event unless the court or the judge shall for good reason otherwise order”.***

In ***Kiska Ltd Vs De Angelias [1969] EA 6***, court held that;

***“A successful party can only be deprived of his costs when it is shown that his conduct either prior to or during the course of the suit has led to litigation, which, but for his own conduct might have been averted...where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised unjudicially or on a wrong principle”.***

In the present case, the applicant was the successful party in the lower court and costs were granted to him. However on appeal, the same applicant lost the appeal. Section 27(1) of the Civil Procedure Act, the court or judge has full power to determine by whom the costs are to be paid. It was therefore not an error to grant the costs to the respondents as they were entitled to them since they were the ones dragged to court by the applicant/appellant.

As for the costs in the lower court, I agree that it was an accidental slip to award the same to the respondents when the

fact is that the applicant/appellant had won and was awarded costs but decided to appeal against the quantum of damages awarded in the court below. The costs to the respondent will, therefore, be limited to the costs in the appeal.

In the present application, the justice of the case requires that each party meets their own costs.

**Elizabeth Musoke**

**JUDGE**

**31/10/2014**