

IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA

(LABOUR DISPUTE NO. 082 OF 2014)

SARAH RECHEAL BIRUNGI.....CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG(U).....RESPONDENT

This ruling arises out of a disagreement between both parties on costs. The main claim was settled amicably between the parties who were engaged by both counsel in settling the matter.

The parties however did not agree on costs with the respondent contending that each party bears own costs and the claimant contending that the respondent should bear the costs.

Ms Faidha Joy for the claimant argued that in accordance with section 27 of the civil procedure Act costs follow the event and that the court had a discretion to determine who paid the costs. She argued that the court's discretion should be exercised in favor of the claimant since he diligently prosecuted the case from 2014 and later on graciously agreed for out of court settlement even when she had a good chance to win the case.

She argued that the matter was instituted after the respondent failed to act on a notice of intended suit that was served onto them. She relied on the case of **FIDELITY INTERNATIONAL IMPORTS LIMITED VS CENTRAL BANK OF KENYA AND ANOTHER 2003 EA(1)56**. She also relied on **UDBVS MUGANGA CONSTRUCTION COMPANY 1981 HCB 35**.

Mr. Ndyagambaki for the respondent argued that given the circumstances of this case each of the parties ought to bear own costs. According to him a consent Judgement having been entered there was no successful party. He asserted that the agreed sum had been offered to the claimant as early as March 2014 and all the time this sum had been waiting for collection.

According to counsel the notice of intended suit was responded to by offering the same sum of money but the claimant chose to run to court. He argued that this being a court of equity it

should not subject the respondent to further costs after the claimant got legal advice and accepted the sum (originally offered to him)

We are in agreement with the claimant that the position of the law is that costs follow the event and that the award of costs is always at the discretion of the court.

We are also in agreement with the respondent that this is a court of equity which ought not subject any party to the proceedings to further costs if the Justice of the case does not call for it.

It is not very clear from the plaint but it seems the suit was filed originally in the civil division of the High court on 09/07/2014 as civil suit 224/2014. A memorandum of claim was registered in this court on 20/10/2014. It is also noted that the respondent filed the defense in the civil division on 30/07/2014.

It is not disputed that the respondent offered the claimant the agreed sum of money in March 2014 long before the suit was filed in the court. This being the case we believe the assertion of the respondent that the notice of intention to file the suit was not ignored by the respondent but was reacted to by offering the same sum of money that was eventually accepted by the claimant in an attempt to settle the matter outside the legal process. It therefore can not be a reason for this court to grant costs.

At the same time the matter having been filed in July 2014 and having been transferred to the Industrial court in October 2014 we are of the considered opinion that not a lot of litigation processes were done in the High court before the case was transferred to this court so as to warrant exercise of the discretion to award costs.

The first time the matter was called for hearing in this court both parties were willing to settle and they sought an adjournment to do the same. Indeed by the next appearance they had settled the matter in the same terms that the respondent had proposed in March 2014.

Whereas we agree with the submission of counsel for the claimant that having accepted these terms in no way suggested that her client had no good case, we at the same time think that this

court being a court of equity should always encourage parties to settle matters outside the court process.

In the case of **IMPRESSA ING FORTUNATO FEDERICE VS NABWIRE EA( 2001)2 383** it was held

**" The effect of section 22 of the civil procedure Act was to leave the issue of costs to the court's absolute discretion to determine by whom and to what extent costs should be paid. Like all judicial discretions this was a discretion to be exercised judiciously on the facts of each case....."**

It is our opinion that in the instant case each of the parties having amicably participated in settling the claim and having settled it on the terms originally proposed by the respondent before the matter was filed in court the justice of the case demands that no further costs be levied on either of the parties. We therefore order that each party bears own costs.

SIGNED

- 1.Hon. Justice Ruhinda Asaph Ntengye, Chief Judge.....
- 2. Lady Justice Linda Lillian Mugisha Tumusiime.....

**PANNELLISTS**

- 1. Mr, Ebyau Fidel.....
- 2.Mr.F X Mubuuke.....
- 3.Ms. Harriet Mugambwa.....

Dated the.....of.....2016