



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 173 OF 2021
(Arising from L.D.M.A No.139 of 2019)

MUNAZZANATI AL DAWA AL ISLAMIYA:.....:APPLICANT

VERSUS

1. ZUENA SAID HASSAN :.....:RESPONDENT
2. ORIJABO THABIT IDRIS

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr.Swaib Chemisto of M/S Oasis Advocates for the Applicant.
2. M/S Kumuga & Co Advocates for the Respondent.

Case Summary

Civil procedure-costs-costs of execution proceedings-taxation of costs- In this case, the Applicant challenged a Registrar's decision to award UGX 1,000,000 in costs to the Respondents following a notice to show cause why execution should not be issued. The Respondents had previously won a labour officer's award for severance and other payments. The Applicant argued that no formal request for costs had been made and should not be awarded in execution proceedings. The court held that the Registrar had the discretion to award costs even without a specific request and that costs could be granted in execution matters. However, the court set aside the UGX 1,000,000/= award because it had not been taxed and ordered the Respondents to file a bill of costs for taxation.

RULING

Introduction

- [1] By motion, under the provisions of Order 50 Rule 8 the Civil Procedure Rules S.I 71-1(from now CPR), the Applicant sought that the Registrar's award of UGX 1,000,000/= to the

Respondent's as costs in a hearing upon a notice to show cause(*from now NTC*) why execution should not issue be set aside. The Applicant asked that the costs of this appeal be provided for.

Background facts

- [2] The Respondents were employees of the Applicant who filed a complaint with the Labour Officer at the Ministry of Gender, Labour and Social Development at Kampala. On the 6th of June 2019, Mr. Buyego Ismael Kalanda, Labour Officer, awarded the Respondent's UGX 19,040,000/= as severance pay, payment in lieu of notice and compensatory orders.
- [3] The Respondents filed Miscellaneous Application No. 139 of 2019 seeking to execute the labour officers award. When the matter came up before the Registrar of this Court, Mr. Ambrose Mugweri, appearing for the Applicant, informed the Court that it had filed an appeal against the labour officers award and prayed that execution would not be issued until the appeal was handled.
- [4] Counsel Chemisto, appearing for the Respondents, argued that the Applicant had not taken steps to prosecute the appeal since filing it in January 2019 and that an appeal did not operate as a stay of execution.
- [5] In her ruling, the Learned Registrar noted that no application for stay of execution was filed for close to two years. She also said that an Appeal is not an automatic stay of execution. The Registrar granted the application for execution with costs in the sum of UGX 1,000,000/=.

The Application

- [6] Aggrieved by that decision, the Applicant filed the present application seeking to set aside the award of costs. The Applicant also sought costs here. In his supporting affidavit, Dr. Omer Mohamed Mohamed Salih Algaz was deposed to an order of costs by Her Worship Sylvia Nabaggala, then acting Registrar of this Court, in proceedings upon an NTC when costs had not been prayed for. He was also deposed to no costs being provided for an application for execution. We were asked to set aside the order of costs in the interests of justice.

The Respondent's case

- [7] In her opposing affidavit, the 1st Respondent averred that the application did not have merit. She supported the Learned Registrar's decision to award costs because the appeal did not operate as a stay of execution. On the advice of Counsel, she also averred that the Respondent deemed the present application frivolous and vexatious.
- [8] We invited the parties to address us by written submissions, which we have summarised below

The Applicant's submissions

- [9] Mr. Chemisto argued that the Respondent did not pray for costs, and there was no application in law to deserve costs. In any case, no costs are provided in law for execution. He contended that Courts should not grant what has not been prayed for. He cited *SDV Transami v Nsibambi*¹ for the proposition that the court has discretion to award costs and that an appellate Court will only interfere with the award when the decision has been made injudiciously, on a wrong principle, or when it gives no reason for its decision. It was suggested that the only possible costs were the bailiff's costs. Counsel also cited Regulation 38 of the Advocates (Remuneration and Taxation of Cost) Rules for the provision that costs should be taxed between party and party unless the costs are awarded between advocate and client. It was argued that the award of costs was unjust and should be set aside.

The Respondent's submissions

- [10] Counsel for the Respondents argued that costs follow the outcome of the suit to a successful party and supported the learned Registrar's discretion to award UGX 1,000,000/= in costs. Counsel cited *Mugisha and Anor v Mpiima*² where Busingye J. held that costs follow the event. It was submitted that the application was misplaced and misguided, a waste of time, and intended to delay the successful party from further obtaining the fruits of litigation. We were asked to dismiss the application with costs.

Determination

- [11] Both parties correctly restated the law to the effect that the discretion to award costs rests with the Court. Section 27(1) of the Civil Procedure Act Cap. 282(**the CPA**) provides as follows;

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 and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of such power. Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

- [12] In *Katon Manufacturers Ltd v Liaog Ning Middle East & Anor (5 April 2011)*,³ Madrama J (as he then was) cited *Makula International Ltd v His Eminence Cardinal Nsubuga & Anor*⁴ and *Premchant Reichard Ltd v Quarry Services of East Africa No. 3*⁵ for the proposition that the

¹ (2008) ULR 501

² [2020] UGHCLD 33

³ [2011] UGCommC 200

⁴ [1982] UGSC 2

⁵ (1972) E.A. 162.

discretion under section 27 has, however, to be exercised judicially. In *UTC v Outa*⁶ it was held that the Judge, in refusing to award costs of the dismissed suit, did not act judicially because the reason that counsel did not apply for costs was not "good reason" within the proviso of section 27(1)CPA.

- [13] These decisions demonstrate that the appellate Court will only interfere with an injudicious exercise of discretion or wrong and can grant costs whether a party seeks them or not. As a result, the Applicant's primary complaint collapses. We cannot agree that because the Respondents did not pray for costs, the Registrar had no discretion to grant costs. The grain is that costs follow the event. This limb of the complaint against the Registrar's exercise of discretion fails.
- [14] The other aspect of the complaint is that there was no application for which a grant of costs should be made or that costs are not available in an application for execution. We do not think this to be very accurate. First, the Registrar of the Industrial Court stands at a functional parity with a Registrar of the High Court under Section 12 of the Labour Disputes(Arbitration and Settlement) Act Cap. 227. In this regard, functional parity is derived from Order 50 Rule 4 CPR, which entails the issuance of formal orders for attachment and sale of property or issuance of notices to show cause on applications for arrest and imprisonment in execution of awards and decrees both of this Court and adjudicatory decisions of the labour officers.
- [15] Secondly and perhaps more significantly, the process of execution commences with the filing of an application for execution under Order 22 Rule 8 CPR, which is filled out in Form 5 of Appendix D to the CPR. In the final column of Appendix D, in both forms of attachment(sale of movable and immovable property), the following words appear:

"and the costs of taking out this execution."

In their plain and ordinary meaning, these words permit remuneration for an application for execution. This is a clear meaning that dispels the Applicant's complaint and fails the second limb of the application or appeal.

- [16] The final point relates to the quantum of costs. Was the Learned Registrar entitled to award UGX 1,000,000/= as costs for the application? On a reading of Section 38 of the Advocates Act Cap. 295 where it is provided that the costs awarded by the court on any matter or application shall be taxed, we think it was improper that the sum of UGX 1,000,000/= was imposed on the Applicant without taxation. The law requires party-to-party taxation by which the parties would exercise the provisions of the Sixth Schedule to the Advocates Act in guiding the Court at establishing a quantum of costs. For this reason, we would set aside the order of costs for UGX 1,000,000/= and direct the Respondents to file a bill of costs for the execution of LDMA 139 of 2019 for its taxation.

⁶ [1985]HCB 27

- [17] We do not think there is reason to grant the Applicant costs of this application because the exercise of discretion was of no fault of the Respondents, fault and misconduct being key considerations for awarding costs in employment disputes.⁷

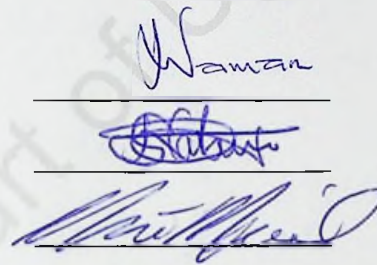
It is so ordered.

Signed, dated and delivered at Kampala this 30th day of September 2024.

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.



30th September 2024
10:47 am

Appearances

1. For the Respondents: **Mr. Richard Kumbuga**
2. Applicant absent.
Respondents in Court.
Court Clerk: **Mr. Samuel Mukiza.**

Mr. Kumbuga:

I appear for the Respondents. Applicant is not in Court. Matter for ruling and we are ready to receive it.

Court:

Ruling delivered in open Court.

10:59 a:m

Anthony Wabwire Musana,
Judge, Industrial Court.

⁷ See *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GM&H* [2023] UGIC 89