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THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CV-CA-0007 OF 2001

(From Mbale CA No 61 of 1999)

(Original Bubutu CS No. MM 6 of 1999)

NATHAN MUKHAMAAPPELLANT

VERSUS

PAUL WEOTA NAMATITI.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The respondent herein sued the appellant in the Grade II magistrates court of Bubutu, Mbale for refund of money he spent while reconnecting electric power for their mutual benefit. The trial magistrate Grade II found that there were receipts of payment of power from Uganda Electricity Board (UEB) in the names of the respondent, and therefore, on account of an agreement entered into between the parties, wherein the respondent was to pay 10% of the power bills while the appellant paid 90%, he ordered the appellant to pay his share, which was 90% of the money spent.

It was further found by the trial magistrate that part of the money spent by the respondent was for bribing the officials of UEB to reconnect the power, after it was cut off three times for the reason that the appellant had by passed the UEB power meter, and was therefore tapping the power illegally.

On appeal to the Chief Magistrate Mbale, the court found that there was evidence of payment of the power bills by the appellant as was agreed by him and the respondent from time to time. There was evidence also that indeed the respondent expended money in bribing the UEB officials to reconnect the power after it was disconnected, having found the appellant using the same illegally.

The Chief Magistrate allowed the appeal and declined to award damages to the respondent in respect of the money he spent on bribing the UEB officials as this was a criminal act. He ended as follows;

‘For the reasons above, I will allow the appeal and set aside the judgment and orders of the lower court. Because of the peculiar circumstances where the respondent is denied damages on technical grounds that the expenditure is unlawful and cannot be allowed, each party shall bear his own costs of appeal. I so order in the interests of justice.’

The appellant was dissatisfied with the above order on costs, and he appealed to this court on that ground only. Both counsel, Mr. Natsomi for the appellant, and Mr. Musiiho for the respondent filed written submissions.

Both counsel relied on the same authorities for the principles of law regarding award of costs. According to *Civil Litigation by O’Hare and Hill* 8th edition at page 523, the general principle is set down that as between litigants, costs follow the event. The loser will be ordered to pay the winners costs and will be left to bear his own.

This was re statement of the principle set down by Lord Atkinson in Donald Campbell v. Pellock [1923] AC 732 at page 815 where he held that,

‘there is a settled practice of the courts that in absence of special circumstances, a successful litigant should receive his costs, that it is necessary to show some ground for exercising a discretion by refusing an order which would give them to him. The discretion must be judicially exercised.’

The above principle is enacted in our statute books as section 27 of the Civil Procedure Act, which provides in part as follows;

‘(1) subject to such conditions and limitations as may be prescribed, and to the provisions of any other law for the time being in force, the cost of and incident to all suits shall be in the discretion of the 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 give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge orders otherwise.’

In J.K. Patel v. Spear Motors Ltd. [1993] 1 KALR 40 the supreme court held that a successful party should be awarded costs, if not the reasons must be stated and discretion exercised judicially.

The above principles have been re stated in this and superior courts. In Rwantale v. Rwabutoga [1988-90] HCB 100 it was held that a successful party is generally entitled to costs, but that entitlement is discretionary and the discretion must be exercised judicially. A successful defendant 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 avoided.

This was repeated in Francis Butagira v. Deborah Namukasa [1992-1993] HCB 98, where it was held that under S.27 CPA, the court is given discretion to determine by whom costs of the proceedings should be paid, and the amount of such costs.

The general rule is that costs follow the event and a successful party should not be deprived of them except for good cause. This means that a successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him.

The court may not only consider the conduct of the party in actual litigation, but also matters which led up to the litigation. Where the court has exercised its discretion on costs, an appellate court will not interfere unless the discretion has been exercised injudiciously, or was based on wrong principles. Where the trial court does not give reasons for its decision, the appellate court will interfere where if it is satisfied that the order is wrong. It will also interfere where it considers that the reasons given do not constitute good reason within the meaning of the section of this rule.

The same proposition of the law was propounded in *Uganda Development Bank v. Muganga Construction Co. Ltd.* [1981] HCB 35, and in *Prince Mpuga Rukidi v. Prince Solomon Gafabusa Iguru & Others* SSCA No. 18 of 1994 (unreported).

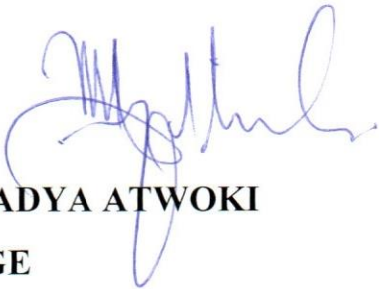
The learned Chief Magistrate observed that the appellant committed breaches of the law when he by passed the power meter, and used the electricity illegally. This led to the disconnection of the power from the entire building. This was done not once, but at least three times. From this illegal consumption of electricity by the appellant, UEB disconnected the power supply. The respondent sought to have power reconnected. But rather than asking for the reconnection using the proper channels, he instead chose to bribe the UEB officials to reconnect the power supply.

Both the appellant and the respondent were guilty of improper conduct. From this improper conduct, which could well be criminal, the suit arose, in that the respondent wished to get a refund of the money spent inter alia, in bribing the UEB officials. The bribing would not have come about if the appellant did not tap power illegally.

From the evidence which was accepted by both the trial court, and the Chief Magistrate on appeal, conduct of the appellant cannot be said to have been free from blame. It contributed to the bringing of this suit in the first place. For that conduct, the respondent expended money, albeit on some unlawful venture, but from which both the appellant and respondent benefited. It was only fair and just that while the appellant was successful on appeal, he ought not to benefit from his own wrongdoing by being awarded costs of the suit.

In Devram Nanji Dattan v. H. K. Dawda (1949) 6 EACA 35, it was held that a successful defendant who is after all brought into court against his will can only be deprived of his costs when it is shown that his conduct either prior or during the course of the action has led to the litigation which, but for his own conduct might have been averted. The appellant in this case fell squarely in the above category.

I agree with the reasons given by the Chief Magistrate that in the interest of justice each party should bear his costs in that court. The appeal was in respect of costs only. It is accordingly dismissed with costs to the respondent.

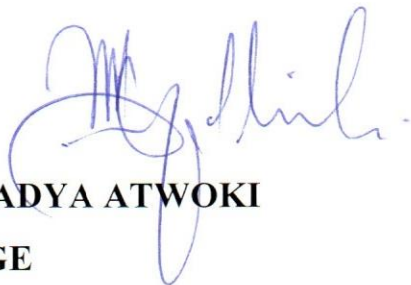


RUGADYA ATWOKI

JUDGE

10/03/09.

Court: This judgment shall be read by the D/Registrar of the court.



RUGADYA ATWOKI

JUDGE

10/03/09.