



IN THE HIGH COURT OF TANZANIA

AT BUKOBA

CIVIL APPEAL NO. 3 OF 2019

(Arising from Civil Case No. 13 of 2016 at the District Court of Muleba)

MAULID YAHAYA----- APPELLANT

VERSUS

MUGISHA RENATUS & 4 OTHERS ----- 1ST RESPONDENTS

JUDGMENT.

3/3/2021 & 23/4/2021.

KAIRO, J.

The Appellant, Maulid Yahaya preferred this appeal after being dissatisfied with the decision of the District Court of Muleba delivered on 21/12/2018. The root cause is Criminal Case No. 335 of 2015 filed at Muleba District Court whereby the Respondents were alleged to have caused bodily harm to the Appellant herein. However, they were all acquitted after the prosecution failed to prove the charge beyond reasonable doubt.

Following the said acquittal, the Respondents instituted Civil Case No. 13 of 2015 for malicious prosecution against the Appellant.

According to them, the Appellant gave the police false information against the Respondents, as a result they were charged with frivolous and vexatious charges in Criminal Case No. 335 of 2015 at Muleba district Court and as a result they suffered damages to which they pray the court to compensate them. After the adduce of evidence, the court dismissed the suit for want of proof. The court further ordered each party to bear its own cost reasoning that the claims cropped up in the form of political parties' campaign struggles.

It is the denial of the cost award to the Appellant which didn't amuse him, hence this appeal raising six grounds of appeal as follows: -

- 1. That the trial judge erred in law and fact to refuse to grant costs to the Appellant and requiring each party to bear own costs after establishing that the Respondents failed to prove the tort of malicious prosecution and consequently dismissed their suit against the Appellant.*
- 2. That the trial magistrate erred in law in refusing to grant cost to the Appellant stating that was so because the dispute leading to the suit was caused by political parties struggle during the election campaigns of the 2015 general election;*



3. *That the trial magistrate erred in law in not declaring the Appellant the winner or the suit.*
4. *That the trial magistrate erred in law in refusing to grant costs to the Appellant who was the winner in that suit contrary to the well-established principle that a successful party is entitled to cost.*
5. *That the reason given by the trial magistrate in refusing to grant costs to the Appellant are not good and sound reason and are not backed up by any law.*
6. *That the trial magistrate erred in law and fact in refusing to award costs to the Appellant who was forced to hire an attorney from afar, pay his legal fees and transportation and upkeep costs for the entire period of trial and thus exacerbate his sores of litigation.*

Wherefore, the Appellant prays that the appeal be allowed with cost both at the lower court and in this court.

The Respondents were served by way of publication which was effected in Nipashe Newspaper of 7/4/2020 at Pg. 18, and a copy availed to court accordingly. The court thus ordered the matter to proceed exparte. The Appellant on his part was receiving legal services from Dr. Rugemeleza Nshalla Advocate.

In his oral submission to amplify the grounds of appeal, Dr Nshalla submitted that, the Appellant was aggrieved by the line of reasoning of the trial court. He clarified that he had worn the suit he had fought for. He

went on to clarify that, he was forced to come to court by the Respondents, which action necessitated the hiring of an advocate from DSM who had to fly to Bukoba from DSM, then drive to Muleba more than ten times. Surprisingly after winning the case, he was told that he will not be reimbursed the cost incurred.

Dr. Nshalla went on to submit that the suit at issue didn't concern political parties but individuals. Besides, there was no witness who testified from a political party nor that any one stated that the same had a political nature. Instead, the Respondents instituted the suit claiming to be maliciously prosecuted by the Republic at the instance of the Appellant. The said suit was later found to be wanting thus dismissed, as such the Appellant was entitled to cost. Dr. Nshalla went on to submit that he is aware that, costs are given at court's discretion but where cost is not to follow the event, the court has to give reason. He cited Section 30(1) & (2) of the CPC Cap. 33 RE: 2019 to back up his argument. He went on that though the Muleba district court gave reasons for cost denial, but the reasons were not judicious or in accordance with the law. He insisted that cost is the usual consequence of litigation to which the Respondents herein are not exempted and referred this court to the case of **Shabani Fundi vrs Leonard Clemence; Civil Appeal No. 38 of 2014 CAT DSM** (unreported) to buttress his stance. The Court of Appeal further emphasized the presence of sound reasons in the circumstances a successful litigant is dis-entitled to cost. He added that, a reason by the trial court that the suit emanates from political struggles thus the Appellant being the winning party shouldn't be awarded cost is not strong enough.



He supported his argument with the case of **Zainabu Ajit Pattni vrs Patricia F. Mwanukuzi; Civils Appeal No. 23 of 2015 CAT DSM** at the 2nd Page wherein His Lordships stated *"despite the fact that the Applicant to the case has conceded to the objection about incompetency of the appeal, the Respondent spent time and resources in preparation of today's appearance and hearing of the Pos as well as citing for the authorities thereof, we think those expenses should be reimbursed by way of cost"*.

Dr. Nshalla concluded that, the Appellant has spent money by paying the counsel's tickets to come to Bukoba then Muleba as such denying him cost is another punishment to him. He thus prays this court to rule out that the decision of the District Court was based on unsound reasoning and the same be overruled. He further prayed the court to award cost at the lower court and the High Court.

I wish to state from the onset that I will discuss all of the raised grounds of appeal collectively as they all revolve around the denial of the cost to the Appellant by the trial court. Having carefully considered the submissions by Dr. Nshalla when amplifying the same, the issue for determination before the court is whether the reason advanced by the trial court to deny cost to the Appellant was judicious and sound.

It is undisputable that litigation process is costly in terms of time and money. Parties have sometimes to engage advocates as it happened in this case, file pleadings at a cost, court attendance, time spent etc. All of these attract expenses which essentially is to be reimbursed by the losing party

as a general rule. This stance has been spelt out in various cases, among them being **Bahati Moshi Masabile t/a Ndondo Filing Station V Camel Oil (t); Civil Appeal 2018 (unreported)** wherein the court observed that, as a general rule a winning litigant must be awarded cost as a matter of right.

Essentially the right to grant cost is stipulated categorically in Section 30(1) and (2) of the CPC Cap 33 RE: 2019 as rightly argued by Dr. Nshalla to which I will herein quote in verbatim for easy reference :

"subject to such conditions and limitation as may be prescribed and to the provision of any law from the time being in force, the cost of incidental to, all suits shall be in the discretion of the court and the court shall have full power to determine by whom or out of what property and to give all necessary directions for the purposes afore said, and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the court directs that any cost shall not follow the event, the court shall state its reason in writing". (emphasis mine)

According to the above cited provision, the court has got discretion to award cost. However, to ensure that discretion is judiciously exercised the legislature has put as a requirement that reasons for not awarding cost is to be stated in writing; Sec 30(2) of the CPC (supra).

In the case at hand the trial court gave reason for not awarding cost to the effect that the suit arose during election campaigns of year 2015. Further

that, the claims cropped up in the form of political parties' campaign struggle.

I have gone through the trial court proceedings but nowhere was it recorded that the witnesses were from political parties. It could be true that the dispute arose during election campaigns struggle. Nevertheless, that doesn't mean that those who commits offences during that time are to be left scot free, otherwise chaos will erupt and the election cannot be conducted peacefully. A political party by itself cannot commit any offence but it's members can. In the circumstances therefore, members are responsible for their actions individually. As such I agree with Dr. Nshalla that the issue that culminated to this matter concerned individuals and not political parties as was stated by the trial court.

Further to that, nowhere the law provides for cost exemption to individuals who commit offences during election campaign or any suit emanating from election campaigns. Section 30 (2) of CPC (supra) is very categorical that a winning litigant has to be awarded cost as a matter of right and where it declines, the court shall state its reasoning in writing. I hasten to add that the reason should be sound and judicious. The provision has used the word *shall* which denote mandatory requisite.

The wanting question therefore is whether the advanced reasons by the trial court was sound and judicious.

In my conviction, the answer is in the negative. As earlier stated, litigation generally attracts expenses and cost is awarded not as a punishment to a defeating party but to reimburse the cost incurred by a successful party

which otherwise, he/she wouldn't have incurred if not for the instituted suit. The same is awarded to the successful party regardless of the nature of the case unless the law or practice exempt such type of a case. To the best of my understanding neither malicious prosecution, nor case emanating from election have been exempted as far as awarding cost is concerned.

When submitting Dr. Nshalla argued that the Appellant hired the Advocate from DSM which is true. The record also reveals that the case was instituted in Muleba, thus the Advocate had to fly to Bukoba, then drive to Muleba whenever the case is scheduled which Dr Nshalla stated to be more than ten times before the matter was determined, apart from filing fees to mention but few. Sincerely all those are cost which in my view, the Appellant had a right to be compensated. The Respondents ought to know before instituting the matter that they were involving themselves and the Appellant into costly process which they have to compensate the Appellant in case they will not succeed, as it happened.

In Geofields Tanzania Ltd vrs Maliasili Resources Ltd & Others; Misc. Comm. Cause No. 323 of 2015 [2016] TZHC COM D8 the court had this to say when faced with a cost issue:

"It is trite law that the losing party should bear the costs of a matter to compensate the successfully party for expenses incurred for having to vindicate the right".

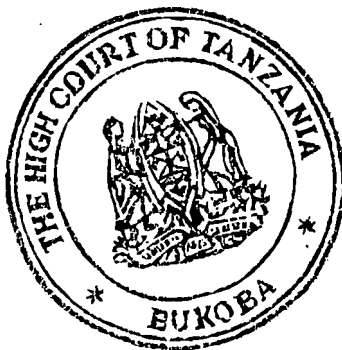
The court went further that:-



"Generally, costs are awarded not as a punishment of the defeated party but as a compensation to the successful party for the expenses to which he had been subjected or for whatever appears to the court to be the legal expenses incurred by the party against the expenses incurred by the party in prosecuting his suit or his defense. Costs are thus in the nature of incidental damages allowed to indemnify a party against the expense of successfully vindicating his right in court and consequently the party to blame pays cost to the winning party without fault".

In the circumstances therefore, the trial court's discretion to deny cost to the Appellant was not exercised judiciously for want of judicious reason. Appeal allowed with cost. I further award cost to the Appellant for Civil suit No. 13 of 2016 of the District court of Muleba as prayed.

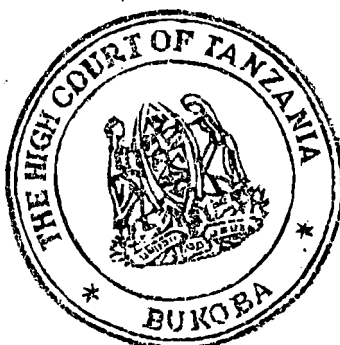
It is so ordered.




L.G. Kairo
Judge

23/4/2021

R/A explained.




L.G. Kairo
Judge

23/4/2021