IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL CAUSE NO. 16 OF 2015

(Arising from Commercial Case No. 71 of 2011)

PRADEEP KUMAR LALJI GAJJAR
MINAKSHI PRADEEP LALJI GAJJAR ..... **APPLICANTS**
GK FARMS

VERSUS

VITA GRAINS LTD ..... **RESPONDENT**

22nd & 29th April, 2015

RULING

MWAMBEGELE, J.:

The present application arises from Commercial Case No. 71 of 2011 which was decided by this court in favour of the respondent against the applicants on 16.12.2014. The applicants, who were the plaintiffs in that suit, were dissatisfied and wished to appeal to the Court of Appeal. However, the moment they wanted to appeal, they realised that they were not within the prescribed time. They thus filed the present application for extension of time to, and file an application for leave to

appeal to the court of appeal. They made the application under section 14 (1) of the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002, section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2002, rule 45 (a) of the Tanzania Court of Appeal Rules, 2009, section 47 (1) of the Land Disputes Courts, Cap. 216 of the Revised Edition, 2002 and sections 68 (e) and 95 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002. The application has been supported by a joint affidavit of Pradeep Kumar Lalji Gajjar and Minakshi Pradeep Gajjar.

On 23.02.2015 a M/S IMMMA ADVOCATES filed a preliminary objection on the application to the following effect:

> The application is misconceived as there is no requirement to seek leave to appeal against a decree of the High Court Commercial Divisions in the exercise of its original jurisdiction.

When the application came for hearing on 22.04.2015, Mr. Lyimo, learned advocate who appeared for the applicants (judgment debtors) holding brief for Mr. Tesha Advocate, readily conceded to the preliminary objection. He stated that having gone through the records of the case and having considered the preliminary objection, he was satisfied that no leave to appeal to the Court of Appeal is required in decrees which have been dealt with by this court in its original

jurisdiction. He, however, prayed that there should be no order as to costs.

Ms Fatma Karume, the learned counsel who appeared for the Respondent (decree holder) conceded to the applicants' counsel to concede to the objection but strenuously prayed for costs. This answers the issue whether or not costs should be granted in the present application.

The bone of contention in the present application, as alluded to in the foregoing paragraph, is on costs. While the applicants' counsel prays that there should be no order as to costs, the respondent's counsel strenuously prays that there should, arguing that they filed a counter affidavit and paid court fees at a tune of Tshs. 20,000/= and that they filed the present preliminary objection which they also paid Tshs. 20,000/=. In short, Ms. Karume, learned counsel for the respondent submits that they spent considerable time and resources in the preparation of the application and the preliminary objection.

Issues relating to costs have been dealt with by courts in this jurisdiction before. It is not a virgin territory. I am aware of two cases of this court which dealt with the issue at some considerable length. These cases are: ***Nkaile Tozo Vs Philimon Mussa Mwashilanga*** [2002] TLR 276 and ***In The Matter of Independent Power Tanzania Ltd and In The Matter of a Petition by A Creditor For***

An Administration Order By Standard Chartered Bank (Hong Kong) Ltd Misc. Civil Cause No. 112 of 2009 (unreported). In these two decisions a good number of authorities on the point have been discussed. Such authorities include ***Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd*** [1967] 1 EA 287, ***Karimune and others Vs the Commissioner General for Income Tax*** [1973] LRT n. 40, ***N. S Mangat Vs Abdul Jafer Ladak*** [1979] LRT n. 37, ***M/S Umoja Garage Limited Vs National Bank of Commerce***, High Court Civil Case No. 83 of 1993 (Dar es Salaam), ***Njoro Furniture Mart Ltd Vs Tanzania Electric Supply Co Ltd*** [1995] TLR 205 and ***Kenedy Kamwela Vs Sophia Mwangulangu & another*** HC Miscellaneous Civil Application No. 31 of 2004 (Mbeya). I entirely am in agreement with the reasoning and verdicts in the ***Nkaile Tozo*** and ***Standard Chartered*** cases (supra) and will adopt them in this ruling.

The general rule is that in civil cases, he who wins has to have his costs. This is the tenor and import of the provisions of subsection (2) of section 30 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 (henceforth "the CPC" which require the court to assign reasons in case it does not order costs to follow the event. The subsection reads:

> "Where the court directs that any costs shall not follow the event, the court shall state its reasons in writing."

In the ***Hussein Janmohamed & Sons*** case (supra) this general rule was underscored, I quote from the headnote, as follows:

> "The general rule is that costs should follow the event and the successful party should not be deprived of them except for good cause".

And the court went on to quote from **Mulla: the Code of Civil Procedure**, 12th Edition, at Page 150 where it is stated:

> "The general rule is that costs shall follow the event unless the court, for good reason, otherwise orders. This means that the 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 the actual litigation, but the matters which led up to the litigation."

The above paragraph in the 12th Edition has been improved in the 18th Edition (2011) of the same legal work by Sir Dinshah Fardunji Mulla, at page 540 as follows:

> "The general rule is that costs shall follow the event unless the court, for good reason, otherwise orders. Such reasons must be in writing. This means that the 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; and this rule applies even to proceedings in writ jurisdiction."

The general principle is therefore that a successful party is entitled to costs unless the court, for good reasons to be assigned, orders otherwise. The question that I pose to myself is whether there are good reasons in the present application that may empower this court do depart from the general principle that a successful party is entitled to costs.

The learned counsel for the applicants did not assign any reason why costs should not be granted. Him being a seasoned lawyer, he must be aware, I suppose, of the position regarding costs as discussed above. The vast experience the learned advocate has in the field, by praying for costs not to follow the event, I suppose, he was just pulling my leg. The fact that the he (applicant's counsel) has conceded to the preliminary objection, in my view, is no sufficient reason to warrant this court to depart from the long established principle of law that costs

must follow the event. This court takes cognizance of the fact that the respondent filed a counter affidavit and the preliminary objection the subject of this ruling and paid court fees for so doing. The respondent's counsel also spent time and resources to prepare for and arguing both the application and the preliminary objection. The applicants can therefore not be allowed to go scot free; without paying any costs. In sum, I find no reason why the applicants should be exempted from paying costs.

On this point, I find it irresistible to quote the statement of Bowen, L.J. in ***Cropper Vs Smith*** (1884), 26 Ch. D. 700, at p. 711, quoted by the High Court of Uganda in ***Waljee's (Uganda) Ltd Vs Ramji Punjabhai Bugerere Tea Estates Ltd*** [1971] 1 EA 188:

> "I have found in my experience that there is one panacea which heals every sore in litigation and that is costs. I have very seldom, if ever, been unfortunate enough to come across an instance where a party ... cannot be cured by the application of that healing medicine".

The foregoing statement was re-echoed in the resent past by Othman, J. (as he then was – now Chief Justice of Tanzania) in the ***Kenedy***

Kamwela case (supra) when confronted with an identical situation. His Lordship simply but conclusively remarked as follows:

> "Costs are one panacea that no doubt heals such sore in litigations".

I share the same sentiments as Their Lordships in the foregoing quotes respecting costs as a panacea in litigation. Costs are one panacea that soothes the souls of litigants that, in the absence of sound reasons, as is the case in the present instance, this court is not prepared to deprive the successful litigant with. These are foreseeable and usual consequences of litigation to which the applicants are not exempt.

In the upshot, and as already alluded to above, I would and hereby accordingly strike out the application with the usual consequences of costs.

Order accordingly.

DATED at DAR ES SALAAM this 29th day of April, 2015.

J. C. M. MWAMBEGELE

JUDGE