

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 544 OF 2003

FRED WAIRUGALA & 3 OTHERS-----PLAINTIFF

VERSUS

ATTORNEY GENERAL-----DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The facts of the plaintiff's case are that they were employees of Internal Security Organisation between the years 1987-2003 whose services were terminated.

They filed a suit against Attorney General seeking payment of outstanding claims like leave allowances, gratuity arrears as at the time of termination, ex gratia payments and transport, medical and mileage allowance, non-payment of transfer allowance, special damages all amounting to 3,720,501,903/=.

When the case came up for hearing, the parties held negotiations to try and determine how much of the claim admitted and the portion that was not. The negotiations led to the execution of a consent judgement on 27th April 2004 with the following terms;

- (1) Judgment of 1,174,080,574/= being entered against the defendant
- (2) The plaintiff shall prove the balance of their claim in court.
- (3) The costs await the conclusion of the case.

The plaintiffs engaged services of a new lawyer on 28th February, 2018, who wrote a letter to court, informing court that plaintiffs case/file was wrongly closed and placed in archives without them proving their claims.

Upon perusal of the court record, it is clear that the original consent provided for the balance of their claim was to be proved in court. The court proceedings show that the court set a date for the hearing of the remaining issues for 5.07.2004.

The issues for determination were agreed as follows;

- 1. Whether the plaintiffs are entitled to the reliefs sought?*
- 2. Quantum?*

Counsel Matovu presented two witnesses; Wairugala who testified and was cross examined until 5th/07/2004. It appears the plaintiff got services of new lawyers; Dusabe Herbert and Katuntu Abdul on 8/07/2009.

Counsel Dusabe informed court that they are working out settlement. By 03/12/2009 we should have reached a settlement. On the day for hearing he informed court that they have made a proposal to the Attorney General.

On 16th/03/2010 Counsel informed court that the matter has been settled. Mr Adrole has the terms.

We have agreed that be paid:

- 1. Salary Increment.*
- 2. Payment in lieu of notice.*
- 3. Leave allowance*
- 4. Gratuity*
- 5. Home re-location allowance.*
- 6. Ex gratia payments*
- 7. Transport back home.*

On 15th/03/2012, Counsel Komakech informed the court that his 4 clients are agreeable to the settlement presented by the Attorney General. The judgment was entered in the sums set out i.e

- | | |
|-----------------------------|--------------------|
| <i>1. Khanukha Mutwalib</i> | <i>6,452,354/=</i> |
| <i>2. Magomu Fred</i> | <i>6,264,795/=</i> |

- | | |
|-----------------|--------------|
| 3. Makafu | 2,234,091/= |
| 4. Masheta Paul | 6, 280,219/= |

The sum against each claimant shall attract interest at court rate from the date of this judgment i.e today, till payment in full. The 4 plaintiffs shall also have the costs of the suit.

Counsel Dusabe on 27/03/2012 reported to court that 24 of his clients had also agreed to the defendants' proposal on similar terms like the earlier 4 plaintiffs.

There remained 3 other plaintiffs who were not part of the consent. Under order 17 rule 4 court entered judgement on similar terms.

On 15th June 2012 a consent Judgement was filed in court and the same was duly endorsed by court on 29th June 2012.

A consent order was to be prepared for the 26 plaintiffs against Attorney General and the file was to be referred to the Deputy registrar to enable the remaining plaintiff Kagoro Kaijamurubi to prove his claim against the defendant.

The remaining plaintiff Kagoro proved his claim before Justice Kabiito who awarded him 12,682,632/= on 13/02/2015. The last advocate in this matter representing Kagoro Kaijamurubi taxed his bill of costs on 24th April 2017.

It is surprising that the same plaintiffs who consented to the remaining claims can now purport to engage a new lawyer to obtain the same amount they had consented to without denying it or setting aside the said consent judgment.

It would appear that the plaintiffs are taking court for granted by using this case to continue getting money from Government with a view that the court would be confused enough to grant them a chance in court.

The advocate ought to have thoroughly perused the court record to establish whether their clients had any genuine claims remaining. Any action to retrieve the file from the archives in order to make another false claim is an abuse of court process.

Advocates should avoid being used by 'professional litigants' who want to cheat government using such unscrupulous means of claiming colossal sums of money without any basis after they had already been paid.

Abuse of Court Process was defined in Black's Law dictionary (6th Ed) as

"A malicious abuse of the legal process occurs when the party employs it for some unlawful object, not the purpose which it is intended by the law to effect, in other words a perversion of it."

Parties and their respective counsel should take the necessary steps to safeguard the integrity of the judiciary and to obviate actions likely to abuse its process. See ***Caneland Ltd & Others vs Delphis Bank Ltd Civil Application No. 344 of 1999 (Kenya Court of Appeal)***

It is my finding that this matter was closed with consent of the parties dated 29th June 2012 and later the Judgement of Justice Kabiito in favour of Kagoro Kaijamurubi on 13/02/2015.

Any attempt to bring the file back into the system of the court as an active file is fraudulent and should be discouraged. Litigation ought to come to an end.

The application for reinstatement of said file is dismissed with costs.

I so order

**SSEKAANA MUSA
JUDGE
30th/08/2018**