

SUPREME COURT OF UGANDA
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14.4.2021

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 7 OF 2020
P. C. BUKORU, KAMPALA

CRANE BANK IN RECEVIERSHIP
SIGN: APPELLANT

VERSUS

1. SUDHIR RUPARELIA
2. MEERA INVESTMENTS LIMITED RESPONDENTS

RESPONDENTS' NOTES ON THE NOTICE OF WITHDRAWAL

On the 15th September, 2021, the Appellants signified it's intention to withdraw the Appeal by filing a Notice of Withdrawal. We contend that this did not result in dismissal of the Appeal, and until this Court pronounces itself on the matter, it is not *functus officio*.

The letter stated its intention as follows:

TAKE NOTICE that the Appellant does not intend further to prosecute the appeal.

In an illegal attempt to constitute the document into a court order, the notice purported to determine who is to pay the costs of the Appeal in this Court and the Courts below, against the decisions of the Court of Appeal and High Court. The notice provided:

TAKE FURTHER NOTICE that the Appellant will pay the costs of the appeal and in the courts below to the Respondents.

We submit that the dismissal shall take effect from the date that this Court pronounces itself on the withdrawal. This is because the matter of the withdrawal is hotly contested for three reasons. One, the Appellant sought by it's notice, to reverse the decisions of the High Court and the Court of Appeal that Bank of Uganda (BOU) is to pay the costs, by stating that instead of BOU, the Appellant CBL in Receivership, shall pay the costs. Secondly, by providing that the costs of the appeal in the Supreme Court shall be paid by CBL in Receivership, yet the lower courts had decided who to pay costs in this dispute, the Notice of Withdrawal purported to depart from the decisions of the lower courts. Thirdly the lower courts and this Court already held that the Appellant no longer exists, yet the same non-existent party is filing a Notice of Withdrawal and also determining that it shall pay costs.

For these three reasons therefore the withdrawal remained contentious until this Court is addressed on these contentious matters today and makes its decision. The withdrawal can not result into a dismissal when there are matters that Court has to decide on.

In accordance with Rule 90(4) we wish to put it on the record of court that we do not consent to the withdrawal in its form, or at all, or to the orders it purports to make. Now that the matter is before the Court, we pray that this Court formally dismisses the said appeal today, with costs against Bank of Uganda.

We object to the idea that costs in this Court and the Courts below be paid by the Appellant. Our grounds for objecting are as follows:

1. *The Appellant is trying to reverse a decision of the lower courts on costs*

- a. On the 30th June, 2017, the Appellant filed the suit in the High Court. The Respondents objected to the suit and the High Court dismissed the suit. The Respondents prayed that the costs should be awarded against Bank of Uganda ("BOU") as it was the said BOU that was on record as the entity behind the filing of the incompetent suit. The High Court agreed with the Respondents and awarded costs against Bank of Uganda. Specifically in its ruling the court held that:

From the foregoing there is no doubt that the suit was filed by Bank of Uganda. Since section 96 of the Financial Institutions Act insulated Crane Bank under Receivership from court proceedings, execution or other legal processes the person that should pay costs should be the person who instituted the suit and that is Bank of Uganda. This is so because Crane Bank in Receivership had no capacity to foot the costs and much so the Bank of Uganda that instituted the suit was aware of this incapacity.

In Kyaninga Royal Cottages Ltd vs Kyaninga Lodge Limited HCMA No. 551 of 2018 this court while considering a situation of a nonexistent company had this to say;

"In my view it is the Managing Director of the nonexistent company who instructed the advocates to file the suit. He must have been the one who paid the court fees. He was in my view the person who was behind the Plaint. It is he therefore who should pay the costs."

In the instant case the deponent of the affidavit in reply has put it on oath that Bank of Uganda instructed the advocates. It must have been the one that paid the court fees and it was certainly the one behind the

plaint. The Bank of Uganda should therefore be the one to pay the costs.

- b. The Appellants appealed to the Court of Appeal. Part of the grounds of appeal were that Bank of Uganda should not pay the costs. The Court of Appeal in dismissing the appeal, held on the issue of costs that:

During the hearing of this appeal, the same Margret K Kasule appeared for the Appellant. She is an employee with the Bank of Uganda. It is therefore clear that the Bank of Uganda was the one that instituted the suit, filed the reply to the applications and was always sending its legal counsel to represent it in court. This has left us with no doubt that it was the Bank of Uganda behind the suit and therefore it can only be the Bank of Uganda that pays the costs.

Following the decision of the Court of Appeal, a decree was extracted by the parties (page... of the record). The Appellants consented to the terms of the decree and signed it. The decree clearly provided that the Bank of Uganda was the one to pay the costs of the Appeal. The Appellant can not by it's purported notice of withdrawal reverse the Orders of the High Court and of the Court of Appeal. We pray that this Court condemns the attempts by the Appellant and BOU to substitute binding orders of court by a notice of withdrawal. This Court already found BoU to be in contempt of Court in MA ... of 2020. This is yet another act of contempt of the orders of the lower courts. We pray that this Court finds so.

- c. In its appeal to this court, the Appellant also appealed against the issue of costs. We pray that the Appeal be dismissed and as such, the decision of the lower courts is maintained.
- d. We would also pray that this Court finds that BOU is liable to pay the costs in this court. This is for the following reasons:
- i. The Appellant filed a number of applications and affidavits in reply in this court. The Applications and affidavits in reply have been filed in this Court in S.C.C.A 39 of 2020, S.C.C.A 40 of 2020, S.C.C.A 32 of 2020, S.C.C.A 33 of 2020 and S.C.C.A 2 of 2021. All the affidavits were deponed by Margaret Kasule. Her designation is described as legal counsel of Bank of Uganda. It is therefore without doubt that it is Bank of Uganda that has been instituting the said actions against the Respondents. This was the finding also in the two lower courts.

- ii. In the High Court the fact that the Legal Counsel BOU was the one swearing and filing various documents in court was the basis for the decision that BoU pays the costs. The court held that:

A perusal of the affidavit in reply to the Application throws light on who brought the suit to Court. The affidavit is deposed by Margaret K. Kasule who describes herself and occupation in paragraph 1 thus;

"I am an adult female Uganda of sound mind and the Legal Counsel of Bank of Uganda which is the statutory receiver of Crane Bank Ltd in Receivership and I swear this affidavit in that capacity."

The above wording is similar to the wording that has been adopted by the Appellants in all the Applications before this Court. Margaret Kasule is also on the record of this Court as attending Court on numerous occasions and her designation is always captured on the record as *Legal Counsel of Bank of Uganda*. We would therefore pray that this Court, like the courts below, finds that it is Bank of Uganda that is behind the suits, the appeals and applications against the Respondents and as such it should be the one to bear the costs of this Appeal.

- iii. In addition, the notice that the Appellant filed suggests that the costs in the lower court would be borne by the Appellant. This would amount to a reversal of the Court of Appeal and High Court Judgments and Decrees by the Appellant's notice. We contest the Notice of Withdrawal and state that this is illegal and this Court should dismiss the appeal with costs against BOU.

2. *The Appellant is a non-existent party*

It is further our prayer that the Bank of Uganda should pay the costs because the Appellant is non-existent. And more importantly, under Section 96 of the Financial Institutions Act, no execution proceedings can be commenced against the Appellant. Section 96 of the FIA provides that:

Where a financial institution is placed under receivership —

- (i) *no steps may be taken by any person to enforce any security over the property of the financial institution;*

- (ii) (ii) no other proceedings and **no execution** or other legal process may be commenced or continued against the financial institution or its property. (Emphasis ours)

- a. In making its decision in the High Court, the court held that the Appellant was a non-existent party.

From the foregoing there is no doubt that the suit was filed by Bank of Uganda. Since section 96 of the Financial Institutions Act insulated Crane Bank under Receivership from court proceedings, execution or other legal processes the person that should pay costs should be the person who instituted the suit and that is Bank of Uganda. This is so because Crane Bank in Receivership had no capacity to foot the costs and much so the Bank of Uganda that instituted the suit was aware of this incapacity.

- b. In the Court of Appeal, it was held that:

"We agree with the reasoning in the above decision. People should not hide behind non-existent persons, file frivolous suits and seek that courts should make orders as to costs against the non-existent persons. Knowing too well that the successful party shall not be able to make a recovery even when the bill is taxed."

- c. In the Supreme Court, it was held that

- i. When this appeal was filed, it was the receiver that filed. The Appellant then changed status to a liquidator (which was contrary to the law). This means that to date **the Appellant is not existent** and therefore cannot purport to pay the costs. This court held that the change in status would have an adverse effect on the Respondents claim for costs. In SCCA 2 of 2021, it was held that:

Even the question of costs would not arise since, by allowing the amendment, all the issues and claims under the main appeal would be overtaken by events by virtue of the appeal being rendered nugatory and hence moot and academic. This would definitely prejudice the Respondents and cause them injustice since they will be deprived of the fruits of success in the event of the appeal being resolved in their favor.

- ii. This Court has already found that the person behind the suits is Bank of Uganda. In SC Civil Appln 2 of 2021, it was held that:

"Without delving into the merits, and without prejudice, based on the facts, the fact of the record, the background of this application and the entire record, it is our understanding that the Receiver and Liquidator of Crane Bank Limited is Bank of Uganda (BOU)."

- iii. This Court held that CBL in liquidation and receivership are not the same. Therefore, one cannot claim that the costs against the Receiver can be borne by the liquidator:

With respect, we do not agree with the Applicant that Crane Bank Limited (in Receivership) is the same as Crane Bank Limited (in Liquidation), or that the party in the lower courts is Crane Bank Limited.

- iv. In addition to the above, for purposes of interpreting Section 96 of FIA, this Court in SCCA 32 of 2020 has held that:

In our view, Section 96(ii) prohibits any action to be commenced against a financial institution under receivership neither can the financial institution under the arrangement, commence any action.

It is our submission, that in light of the above holdings of this Court it is clear that the Appellant is non-existent. It is also clear that no execution can be commenced against the Appellant. Therefore, an order against the Appellant to pay costs would be in vain.

In accordance with Rule 90(4), we pray that the appeal is dismissed with costs to be paid by Bank of Uganda.

Dated at Kampala this 11th day of November 2021.



Counsel for the Respondents

Drawn by:

Kampala Associated Advocates,
KAA House,
41 Nakasero Road,
P.O. Box 9566,
Kampala.
Email: info@kaa.co.ug