**Bantariza v Harbe International Trading Co Ltd**

**Division:** Supreme Court of Uganda at Mengo

**Date of Ruling:** 14 June 2000

**Case Number:** 14/99

**Before:** Oder, Tsekooko, Karokora, Kanyeihamba and

Mukasa-Kikonyogo JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** H K Mutai

*[1] Practice – Alleged abuse of process of court – Costs – Respondent awarded costs by Supreme Court*

*– Application to have order awarding costs set aside – Parties – Rightful parties to suit – Devolution of*

*interest in suit property – Whether the Respondent abused the process of court by failing to state that it*

*had disposed of the suit property – Order XXI, Rule 9(1) – Civil Procedure Rules.*

**Editor’s Summary**

The Applicant in the current matter instituted proceedings in the High Court against the Respondent in the current matter, seeking its eviction from the suit property on the grounds that it was a trespasser. On 5 November 1995, the suit was dismissed with costs to the Respondent. The Applicant successfully appealed against the dismissal to the Court of Appeal. The Respondent then appealed to the Supreme Court seeking the reversal of the Court of Appeal’s decision. The appeal was successful and was allowed with costs being awarded against the Applicant. The Applicant then filed the current application before the Supreme Court by way of notice of motion under section 8 of the Judicature Act and section 101 of the Civil Procedure Act (Chapter 65) seeking to have the Court set aside its previous judgment or, in the alternative, an order depriving the Respondent of the costs awarded to it. The Applicant’s primary ground for its application was that the Respondent had abused the process of the court by failing to inform either the Court of Appeal or the Supreme Court that it had disposed of the suit property and therefore had no *locus standi* to file and argue the appeals. The Applicant’s counsel argued that following the disposal of the property the new owner should have been substituted as the Respondent in the Court of Appeal pursuant to Order XXI, Rule 9(1) of the Civil Procedure Rules.

Counsel for the Respondent opposed the application on the grounds, *inter alia*, that the application was based on new evidence and that, in any case, the Applicant having filed an appeal against it before the

Court of Appeal, the Respondent was bound to contest it. At the hearing of the application, counsel for the Applicant appeared to give up the prayer challenging the judgment itself and restricted himself to the award of costs.

**Held** – Order XXI, Rule 9(1) of the Civil Procedure Rules was permissive in nature in that where there was an assignment, creation or devolution of an interest, *prima facie*, the suit could be continued in the name of the original party or assignee or person upon whom the interest had devolved. The principle underlying the rule was that the trial of a suit could not be arrested merely by reason of a devolution of the interest of a party in the subject matter of the suit.

A suit had to be tried in all stages on the cause of action as it existed at the date of commencement. In an appeal, the question was whether the trial court decision was correct on the facts as they stood when judgment was entered. It was only in exceptional circumstances that an appellate court could take notice of events that had happened since the institution of the suit and afford relief for the altered conditions;

*Sheokumar v Central Cooperative Bank* [1974] 34 AIR 477 explained and adopted.

In this instance, there was nothing to show that after judgment in either the High Court or the Court of

Appeal, an order had been made forbidding the Respondent to dispose of the suit property. It was also clear that the Applicant had appealed to the Court of Appeal and at that stage the Respondent was entitled, if it chose, to resist the appeal. Accordingly, there was no proof that the Respondent had abused the court process by fighting the appeal in the Court of Appeal or subsequently lodging an appeal in the Supreme Court. The application therefore failed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Gajender Pal and another v Ram B Sirdaw* [1961] EA 344

***United Kingdom***

*Sheokumar v Central Co-op. Bank and another* [1974] All ER 34