**Kamurasi v Accord Properties Ltd**

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

**Date of judgment:** 17 February 2000

**Case Number:** 3/96

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

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] Practice – Costs – Abuse of court process – Order that costs be paid by Appellant’s counsel – Order*

*made without affording counsel an opportunity to be heard – Whether there had been an abuse of the*

*court process – Whether the Appellant’s counsel was liable to pay costs.*

**Editor’s Summary**

On 25 January 1990, counsel for the Appellant filed a plaint on behalf of the Appellant, KC, against two Defendants, SE and CS. The plaint was filed and numbered in the registry as civil suit number 46 of 1990. Summons to enter appearance was duly issued by the court but apparently never served on the Defendants. Some time in March 1990 a second plaint dated 24 January 1990, the same day as the first, was filed with KC and CS named as the Plaintiff and Second Defendant, respectively, but with AP given as the First Defendant. This plaint was given the same number as the first in the registry, possibly on 28 March 1990, and served on the Defendants. The Defendants entered appearance and filed a defence on 23 April 1990. Following various applications and adjournments, the suit was heard and proceedings conducted as if only one plaint had been filed. At the conclusion of the trial, the trial Judge discovered, following a perusal of the record of proceedings and the submissions of the parties, that there had been two plaints filed in court on behalf of the Appellant. On 18 March 1993, he ordered the second plaint to be struck out on the ground of abuse of court process and ordered that the costs be paid by counsel for the Appellant himself. The Appellant appealed to the Supreme Court, arguing that although the record showed that there were two plaints the proceedings had been conducted on the basis of one plaint and the trial Judge erred when he held that the existence of two plaints amounted to an abuse of court process. On the issue of costs, counsel for the Appellant contended that he had argued the case without negligence and to the best of his ability, and also that he had not been afforded an opportunity to be heard before the order against him was made. When the appeal first came before the Supreme Court on 19 July 1999, counsel for the Appellant submitted that service on the Respondent had not been effected and applied for an order authorising substituted service through the press. The application was granted and the hearing of the appeal was fixed for 9 November 1999 so as to allow enough time to effect substituted service and permit the Respondents to read the notice and appoint counsel if they wished. When the appeal next came up for hearing, counsel produced the advertisements that had appeared in the press. These showed that the advertisements had been published on 3 November 1999 and had named the Respondents as AP and one C Sebuliba rather than C Ssekisambu named in the plaints.

**Held** – There was adequate evidence of instances where it appeared that counsel for the Appellant had wished to short-circuit the court process and had engaged in deception of the trial court. The trial Judge was therefore justified in his finding that there had been an abuse of the court process. Moreover, the actions of the Appellant’s counsel in delaying publication of the substituted service coupled with the deliberate, or otherwise, insertion of wrong parties in the substituted service lent credence to the fact that counsel had all along planned for the case and appeal to be heard *ex parte*. A party had the right to be given an opportunity to be heard before his rights were prejudiced or affected by a court’s decision; *R v University of Cambridge* [1723] 1 Str 557 applied. In this instance, although the counsel’s conduct appeared to be blameworthy, justice demanded that he should have been heard before being condemned. Accordingly, this ground of appeal would succeed but the appeal would otherwise be dismissed with costs to the Respondent. **Cases referred to in judgment**

(“**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***

*B E A Timber Co v Indear Singh G 11* [1959] EA 163

*JB Kohli and others v Bachulal Popallac* [1964] EA 219

***United Kingdom***

*Abraham v Justin* [1963] 2 All ER 402

*R v*