THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 137 OF 2014

(Appeal Arising from the Ruling and orders of Justice Wilson Masalu Musene of the High Court at Nakawa dated 15th May, 2015 in Civil Review Applications No. 203 of 2012 and No.365 of 2013 (consolidated) both arising from High Court at Nakawa Civil Suit No. 114 of 2009)

R.C. MUNYANI & CO. ADVOCATES:::::::::::::::::::::::: APELLANT

VERSUS

INTERNATIONAL GROUP FOR TECHNICAL COOPERATION WITH THE DEVELOPING COUNTRIES-ACAV-UGANDA **::::::RESPONDENT**

CORAM: Hon. Justice Geoffrey Kiryabwire, JA

Hon. Justice Monica Mugenyi, JA

Hon. Justice Remmy Kasule, Ag. JA

JUDGMENT OF HON JUSTICE REMMY KASULE, AG. JA

The Appellant appealed to this Court against the Ruling of Hon. Justice Mr. Wilson Masalu Musene, of the High Court at Nakawa delivered on 15th May, 2014 in the consolidated **Civil Review Applications No. 203 of 2012** and **No. 365 of 2013**.

Background

On 16th July 2009, the Appellant, a firm of legal practitioners in Uganda, filed **Civil Suit No. 114 of 2009** in the High Court at Nakawa seeking to recover Ug. Shs 150,000,000/= as well as general damages and costs from the Respondent, a Non-Government Organisation from Italy, offering technical services to developing countries, Uganda inclusive, with its head office in Uganda in Bugolobi, Nakawa Division, Kampala City, P.O. Box 21324 Kampala.

The claim arose out of a retainer agreement allegedly executed between the Respondent and the Appellant, whereby the Appellant was to provide legal services to the Respondent, at a monthly retainer fee of Ug.shs. 5,000,000/= (five million) for a period of two and half years. The Appellant sued the Respondent asserting that the agreed upon fees had not been paid in breach of the said agreement.

The Respondent in a Written Statement of Defence to the said suit denied having executed the retainer agreement with the Appellant. They asserted that they paid the Appellant all the legal fees due as per the work done from time to time and were not in any way indebted to the Appellant.

The hearing of the case was conducted before the Honourable Justice Faith Mwondha, as she then was. She dismissed the Appellant's claim of Ug.Shs. 150,000,000/= but instead awarded them Ug. shs

50,000,000/= as general damages with interest at 10% p.a. from the date of Judgment till payment in full as well as costs of the suit.

After delivery of the Judgment, the Respondent filed **Civil Review Application No. 203 of 2012** on the 22nd may 2012 for a review of the Judgment. The Appellant, also in turn, applied for a review of the same Judgment through **Civil Review Application No. 365 of 2013** dated 25th July, 2013. At the hearing, both Applications were consolidated.

On the 15th May, 2014, His Lordship Wilson Masalu Musene,J delivered a ruling in the consolidated Review Applications. He maintained the award of Ug. Shs 50,000,000/= general damages to the Appellant and ordered each party bears their own costs of the Applications.

Dissatisfied the Appellant lodged this **Civil Appeal No. 137 of 2014** partly challenging the said ruling. The Respondent too cross-appealed, challenging the entire ruling.

Grounds of Appeal

At conferencing the following were agreed upon as the grounds of Appeal.

1. **Whether the learned trial Judge at Review erred in law and in fact by failing to award to the Appellant the balance of the sum Ug.Shs 100,000,000/=(One hundred million).**
2. **Whether the Respondents Cross Appeal should be allowed.**

3. **Whether the learned trial Judge at Review erred in law and in fact by not awarding costs to the Appellant.**

Legal Representation

Learned Counsel Deepa Verma was for the Respondents, while R.C Munyani, Advocate, from the Appellant was present in person. The Country director of the Respondent was also present in Court.

With permission of Court both parties proceeded by written submissions which they adopted.

Submissions of the Appellant

The Appellant's Counsel argued grounds 1 and 2 together and ground 3 separately.

Grounds 1 and 2.

In regard to grounds 1 and 2, the Appellant relied on **Order 46 Rule 1 (1) of the Civil Procedure Rules** and submitted that the Respondent in order to sustain the Application had to prove that they were an aggrieved party and also that there was an error on the face of the record of the Judgment and/or the Court proceedings, the subject of the Review.

Relying on **Mohamed Allibhai Versus W.E Bukenya Mukasa and Others: Supreme Court Civil Appeal No. 56 of 1966** and **Attorney General and 2 Others Versus Boniface Byanyima (2000) KARL, 766,** Appellant's Counsel submitted that a person is said to be an aggrieved party if that person has suffered a legal grievance. A legal

grievance is where the decision sought to be reviewed has wrongfully deprived that person of something or that person's title to something has been wrongfully affected.

Counsel for the Appellant thus contended that the Respondent was not an aggrieved party to be able to sustain an Application for Review. This is because the Judgment of the High Court delivered on 24th October, 2011 in **HCCS No. 114 of 2009**, did not in any way wrongly deprive of the Respondent of anything. The same did not also affect the Respondent's title to anything. Accordingly, the Respondent had no basis to bring an Application for Review under **Section 82** of the **Civil Procedure Act** and **Order 46 Rules 1, 2** and **8** of the **Civil Procedure Rules.** The Review Judge thus ought to have dismissed the Respondent's Application as being without merit. On the part of the Appellant, Counsel submitted that the Appellant was aggrieved by the fact that the Judgment in **HCCS No. 114 of 2009** prevented the Respondent from paying legal fees of Ug.Shs 100,000,000/= to the Appellant thus making the Appellant being aggrieved by being deprived of that money. As to another requirement for Review, the Appellant relied on **Order 46 Rule 3(2)** of the **Civil Procedure Rules** and the persuasive High Court authority of **Yusuf Versus Nokrach: Civil Appeal No. 44 of 1970 (1971) E.A at 104,** to the effect that an applicant for Review must show that there has been discovery of new and important evidence which could not be adduced by the Applicant at trial due to excusable grounds.

The Appellant argued that the Respondent did not adduce any evidence to show that the receipts in which it was claimed that the

Appellant had been paid to a tune of Ug.Shs 12,215,000 were taken to Italy and were in the custody of the head office of the Respondent and the same could not be found. He contended that the Respondent should have attached to the Application for Review a forwarding letter of the receipts and correspondences showing that the documents could not be traced in Italy. The fact that this was not done, proved that the Respondent had not discharged the duty to the Review Court that these receipts had been sent to the Respondent's Headquarters in Italy and could not be traced at the time the Respondent pursued the Application for Review. The Review Judge therefore ought to have rejected this ground of the Respondent.

As to the acknowledged payment of Ug.shs 8,000,000, the Appellant submitted that Ronald Munyani, the managing partner of the Appellant clearly acknowledged that the said amount was paid as legal fees in Court cases but not in regard to fees claimed in **Civil Suit No. 114 of 2009** which fees were for legal services rendered for matters that did not go to Court. The Appellant relied on a persuasive High Court case of **Samwiri Massa Vs Rosa Achen: Civil Appeal No. 3 of 1976**, where the High Court held that when certain facts are sworn to in an affidavit, the burden to deny them is on the opposite party to the cause; and if that opposite party does not deny them, then they are presumed to have been accepted and the deponent need not prove them further.

The Appellant thus faulted the learned Review Judge for having erred when he accepted these receipts tendered by the Respondent as proper evidence when resolving the Respondent's Review Application.

With respect to the Respondent's assertions that a number of documents tendered in the trial Court by the Appellant were forgeries having an added digit to the telephone number, the Appellant's Counsel submitted that at the trial of the High Court **Civil Suit No. 114 of 2009**, the Appellant's Ronald Munyani, explained that the supplier of the letter heads to the Appellant, during the period of the retainership, made errors and printed the wrong telephone number, box and e-mail addresses of the Appellant on some of the letter heads. However, the said letters were signed and received by Benni Guiliano, the then Country representative of the Respondent on behalf of the Respondent and Ronald Munyani on behalf of the Appellant on the days indicated on the said letters.

The Appellant relied on **Yafeesi Tegiike Vs Jamada Wakafutuli (1996) KALR 435**, and submitted that the alleged discovery of new and important evidence by the Respondent which was the basis of the Respondent's Application for review was false. The Review Judge therefore erred when he did not dismiss the Respondent's Application on that ground.

In regard to the Judgment in **HCCS No. 114 of 2009** whereby Ug.Shs 50,000,000/= was awarded as general damages instead of the pleaded Ug.Shs 150,000,000/= retainer fees, because according to the Trial Judge, the written retainer agreement had not been proved by the Appellant, it was submitted for the Appellant that the retainer agreement complied with the provisions of **Section 51(a) (b)** and **51(2)** of the **Advocates Act**. Counsel for the Appellant thus faulted

the learned Review Judge for having maintained the award of Ug.Shs 50,000,000/= general damages.

Counsel referred Court to **Sharif Osman Versus Hajji Haruna Mulangwa; Civil Appeal No. 38 of 1995**, where the Supreme Court held that an agreement must be read as a whole in order to give meaning and effect to the intention of the parties. Learned Counsel thus argued that the intention of the parties to the retainer agreement was that the Respondent was to pay Ug.shs 5,000,000/= per month as legal fees to the Appellant for a period of two and a half years for the legal services rendered, except those involving Court attendances.

Accordingly, Appellant's Counsel submitted, that the Review Judge ought to have held that the Appellant had to be paid by the Respondent Ug.shs 150,000,000 stated in the retainer agreement and not to make another contract for the parties. Therefore the Review Judge erred when he failed to so award. Grounds 1 and 2 of the Appeal had thus to be allowed, Counsel so prayed.

Ground 3.

Counsel for the Appellant faulted the Review Judge in respect of ground 3 for failing to award costs to the Appellant and yet the Respondent had had the **Review Application No. 203 of 2012** dismissed while the Appellant's **Review Application No. 365 of 2013** had been held to be successful.

Learned Counsel contended that the Appellant ought to have been awarded costs in both Applications against the Respondent. This is

because **Section 27** of the **Civil Procedure Act**, provides that costs should follow the event. The Appellant, as the successful party in both Applications ought not to have been deprived of costs of both Applications except for good cause. Counsel relied upon **Francis Batagira v Deborah Namukasa: Supreme Court Civil Appeal No.6 of 1989,** in support of this submission.

Learned Counsel for the Appellant prayed this Court to allow ground 3 of the Appeal.

Submissions for Respondent

Ground 1:

In respect of ground 1, Counsel for the Respondent relying on **Section 82 of the Civil Procedure Act** and the authority of **Mohammed Alibhai v W.E. Bukenya Mukasa and others: (supra)** submitted that the Appellant was not an aggrieved party because there is no legal grievance that the Appellant had suffered.

Counsel referred this Court to the meaning of **"Legal grievance"** as defined in **Ex parte Sidebotham; In re Sidebotham (1880) 14 Ch. D 458**, per James L.J, ***".....the words person aggrieved" do not really mean a man who is disappointed by a benefit which he must have received if no other order had been made: A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title".***

Counsel for the Respondent thus contended that the Appellant having been awarded general damages of Ug.Shs 50 million under the principle of **quantum meirut** for the legal services the Appellant had rendered as assessed by the Judge in **HCCS No. 114 of 2009**, was only disappointed, but not an aggrieved person by that Court decision.

As to the claim that the Appellant had come across new and important matter of evidence necessitating a Review of the Judgment delivered in **HCCS No. 114 of 2009**, Respondent's Counsel contended that the Appellant's Application for review of the Judgment rendered in that Civil Suit was based on some alleged information contained in a Police report. The said Police Report could not in law be a basis for reviewing the decision of Court given after a full trial in **High Court Civil Suit No. 114 of 2014**. The contents of the said Police Report were not made on oath and were from sources that had not been subjected to cross examination. Those contents cannot be a basis for reviewing a Court Judgment delivered after a trial in a cause.

Respondent's Counsel relied on **Kituuma Magala & Co. Advocates Vs Celtel (U) Ltd: Supreme Court Civil Appeal No. 09 of 2010**, and faulted the Review Judge for having not upheld the reasons given by the Trial Judge in her Judgment for not relying upon the Retainer Agreement, the basis of the Appellant's claim.

Counsel for the Respondent submitted that the requirements of **Section 51 (1)(b)(c) of the Advocates Act** had not been complied

with as regards the retainer agreement relied upon by the Appellant, and as such, the Review Judge erred in recognizing the said agreement as valid without considering the law. Ground 1 of the Appeal had thus to be disallowed.

Ground 2:

In regard to ground 2, Respondent's Counsel reiterated the provisions of **Section 82 of the Civil Procedure Act, Order 46 Rule 1 of the Civil Procedure Rules** and the decision in **Mohammed Alibhai Vs W.E Bukenya and Others (supra),** and prayed this Court to allow the Cross-Appeal of the Respondent. The Respondent was an aggrieved party because the Court order that the Respondent pays Ug.shs 50,000,000/= general damages in the Judgment entered against the Respondent in **HCCS No. 114 of 2009** was loss of money by the Respondent.

Respondent's Counsel further faulted the Review Judge for having awarded Ug shs 50,000,000/= general damages basing on sources such as the contents of the Police Report, which was wrong in law.

Counsel further submitted that the Review Judge was contradictory when he rightly recognized that the receipts amounting to Ushs 12,512,000/= were proof that the Appellant had been paid for all the work done; but in the same breath, His Lordship erred when he maintained the award of Ug shs 50,000,000/= general damages awarded by the Trial Judge in **HCCS No. 114 of 2009** on the basis that the Respondent had not adduced evidence to show that the Appellant had been paid for all the work done.

Respondent's Counsel further contended that the Appellant had already taken benefit of the award of Ug shs 50,000,000 as he had already obtained a Decree in **HCCS No. 114 of 2009** and was subsequently paid by the Respondent that sum on presenting that Decree to the Respondent. The Appellant had also, in addition, been paid interest on the decretal sum as well as costs of the suit and those of **Application No. 365 of 2013**. The Appellant was thus no longer an aggrieved party. Counsel prayed Court to resolve ground 2 in favour of the Respondent.

Ground 3:

In respect of ground 3, Respondent's Counsel relying on **Section 27 of the Civil Procedure Act,** submitted that by the Review Judge maintaining the award of Ug.shs 50,000,000/= made by the Trial Judge in High Court **Civil Suit No. 114 of 2009**, meant that the Application of the Appellant to Review the said aspect of the Judgment of the Trial Judge had been dismissed. Accordingly the Appellant was not a successful party to be entitled to costs.

Counsel contended that under **Section 27 of the Civil Procedure Act**, the Judge entertaining the Review had absolute discretion to determine by whom and to what extent such costs were to be paid. The Appellant had not shown that the learned Review Judge failed to exercise his discretion judiciously when he ordered each party to bear their own costs. Counsel thus invited Court to disallow ground 3 and uphold the decision of the Review Judge.

Decision of Court:

This is a first appeal and as such this Court is required to re-appraise all the evidence and to come up with its own inferences, where it is necessary. **See: Eric Tibebaga Vs Fr. Narsensio Begumisa: Supreme Court Civil Appeal: No. 17 of 2002.**

Grounds 1 and 2 will be resolved together and ground 3 separately.

Grounds 1 and 2

This Appeal arises out of a High Court at Nakawa ruling in two consolidated **High Court Civil Review Applications No. 203 of 2012** brought by the Respondent and **No. 365 of 2013** by the Appellant to review the Judgment delivered **in HCCS No. 114 of 2009**.

In **Civil Review Application No. 2013 of 2012,** lodged with the High Court, Nakawa, on 22nd May, 2012, the Respondent in this Appeal was the Applicant and the Appellant was the Respondent. The Respondent sought a review of the Judgment in **HCCS No. 114 of 2009** under **Section 33** of the **Judicature Act**, **Sections 82** and **98** of the **Civil Procedure Act** and **Order 46 Rules 1(2)** and **8** of the **Civil Procedure Rules.**

The grounds for the review were that new evidence had been discovered by the Applicant (Respondent in this Appeal) that the Respondent (Appellant in this Appeal) had tendered forged and/or falsely fabricated documents at the trial of **HCCS No. 114 of 2009**; and that the Judgment in that case had been based upon those documents. Further, that the Applicant had obtained new evidence

that the Respondent had been paid for all the legal work he had rendered to the Respondent. The Applicant could not have obtained the evidence, even with the exercise of due diligence, during the trial of **HCCS No. 114 of 2009.** Hence the necessity to have the Judgment reviewed. The Application was supported by the Affidavit of Pierluigi Floretta, the Applicant's Country Co-ordinator in Uganda.

Then on 23rd July, 2013, the Appellant (Applicant in the Application) lodged **Civil Review Application No. 365 of 2013** in the High Court at Nakawa, also seeking a review of the Judgment delivered in **HCCS No. 114 of 2009** by substituting the award of Ug. Shs. 50,000,000/= with Ug. Shs 150,000,000/= as prayed for in the amended plaint of the suit. The grounds of the Application contained in the supporting affidavit of Ronald Munyani, Advocate, were that the Applicant had discovered new evidence by way of a Police Report that the Respondent had signed the retainer agreement whereby the sum of Ug. Shs. 150,000,000/= was agreed upon to be paid by the Respondent to the Appellant for the legal services rendered. That the said evidence could not be obtained with the exercise of due diligence, at the time the trial of **HCCS No. 114 of 2009** was conducted and Judgment delivered in the said case.

In **Lakhamshi Brothers Ltd Vs R. Raja & Sons [1966] EA 313 at 314,** the Court reiterated the fundamental principle that:

"There is a principle which is of the very greatest importance in the administration of justice and that principle is this; it is

in the interest of all persons that there should be an end to litigation."

The above principle is fundamental and is both ancient and modern:

"interest republican finis litmus", that is: "in the interest of society as a whole, litigation must come to an end". See: **Supreme Court Constitutional Application No. 3 of 2006: John Sanyu Katuramu & 49 Others Vs Attorney General.** See also: **Fangmin Vs Dr. Kaijuka Mutabazi Emmanuel, SCCA No. 06 of 2009.**

It follows from the above fundamental principle that it is the law that a decision of a Court of law on any issue of fact or law is final, as far as the Court making that decision is concerned, so that, subject to the law as to Revision and Review, a party to that decision, dissatisfied with the same cannot apply to the same Court for the reversal of the said decision.

A Court of law must not and cannot sit in appeal over its own Judgment. The remedy for a dissatisfied party is to pursue an appeal in a higher Court, subject to the law providing for such an appeal.

The powers of a Court of law to review by way of revision or otherwise, is also subject to the above stated principle and as such is not open ended.

A review is restricted to an error or an omission or a slip of which the reviewing Court is satisfied that the correction of the same amounts to giving effect to the intention of the Court when the said Court

delivered the Judgment or the order it made. It must be a matter that the Court overlooked but is satisfied that it would have made that order at the time it delivered its decision. The error or omission must be one expressing the manifest intention of the Court. See: **Uganda Development Bank Vs Oil Seeds (U) Ltd: Supreme Court Civil Application No. 15 of 1977. See also: David Mugenda Vs Humphrey Mirembe: SCCA No. 5 of 2012.**

A Court of law cannot correct its own mistake in law, even where the same is apparent on the face of the record, if that mistake is a misunderstanding of the law by that Court. See: **Ahmed Kawoya Kanga Vs Banga Aggrey Fred [2007] KALR 164.**

In the Judgment delivered on 24th October, 2011 in **HCCS No. 114 of 2009**, in which the Appellant was plaintiff and the Respondent was Defendant, the trial Judge (Faith Mwondha, J, as she then was) found on the basis of the evidence that was adduced, that the Appellant had failed to prove the existence of the retainer agreement, whereby the Respondent is alleged to have undertaken to pay the Appellant Ug. shs. 5,000,000 per month for legal services rendered. The Learned Trial Judge set out the reasons for her so finding. These were because the Appellant had failed to avail to Court the original copy of that agreement. The Appellant who also claimed that, in accordance with the Advocates Act, he had deposited an original copy of that agreement with the Law Council, had also not produced any such copy from the Law Council. No explanation was availed to the Trial Judge why the Appellant or some official from the Law Council

could not produce this copy and/or confirm this from the Law Council. The Appellant also did not produce to the Trial Court any written receipt from Posta Uganda through whom the Appellant claimed to have deposited the said copy of the retainer agreement to The Law Council.

The Trial Judge also found that the Appellant, as plaintiff, had to prove that the retainer agreement had been signed by all those that the Appellant claimed had signed the same. Because the Trial Court was not availed the original retainer agreement so as to enable the said Court to ascertain the signature of all those that are said to have signed the same as well as those of their witnesses, the Trial Judge remained in doubt about the existence of the said retainer agreement.

Further, the Appellant had also not called the Notary Public, Joseph Henry Kunya, to testify to Court about the certification of the said retainer agreement, and no reason was given to the Trial Court as to why this was not done.

There was also no expert evidence of any handwriting expert adduced as to the signatures on the retainer agreement, and at any rate, such evidence would be of value if the original of that retainer agreement had been availed.

The Trial Judge, on the basis of the evidence and the Law that she considered, came to the conclusion in her Judgment that:

"Counsel for the plaintiff referred to the retainer agreement but this agreement was not proved by the plaintiff. I was not

satisfied that there was a written retainer agreement in the terms as provided in the photocopy provided to Court".

It is on the basis of the above conclusion that the Trial Judge proceeded to make the orders that she made in her Judgment in **HCCS No. 114 of 2009**.

Any party to **HCCS NO. 114 OF 2009** dissatisfied with the above holding of the Trial Judge, had the option of appealing to this Court of Appeal against that holding or any other aspect of the Judgment. Neither the Appellant nor the Respondent to this Appeal lodged an Appeal against the Trial Judge's Judgment. The evidence on the Court record is that the Appellant took some steps to appeal against the Judgment in **HCCS No. 114 of 2009,** but then never pursued the Appeal.

Instead what the Respondent to this Appeal did was to lodge on 22nd May,2012 a **Civil Review Application No. 203 of 2012** to review the Judgment in **HCCS No. 114 of 2009**. The Appellant, also in turn, on 25th July, 2013, more than a year after, lodged in the same Court **Civil Review Application No. 365 of 2013** again seeking to review the same Judgment in **HCCS No. 114 of 2009**.

Application **No. 203 of 2012** sought a review of the Judgment on the grounds that the Respondent to this Appeal had secured evidence that the Judgment in **HCCS No. 114 of 2009** was based on documents that were forgeries and/or had been fabricated with false hoods by the Appellant. The Respondent also further claimed to have acquired new evidence that the Appellant had been paid all his fees

for the legal work rendered, which evidence, with the exercise of due diligence, was not available to the Respondent at the time of the Trial of **HCCS No. 114 of 2009**.

The Appellant, in turn, through **Civil Review Application No. 365 of 2013** sought a review of the same Judgment in **HCCS No. 114 of 2009** on the grounds that new evidence in the nature of a Uganda Police Report produced by the Respondent in **Civil Review Application No. 203 of 2012** showed that a representative of the Respondent signed the retainer agreement with the Appellant, a fact that the Respondent had all along denied. Therefore, the Judgment in **HCCS No. 114 of 2009** ought to be reviewed so that the Appellant is awarded the whole claimed sum of Ug. shs. 150,000,000/= as retainer fees.

Both **Civil Review Applications No. 203 of 2012** and **No. 365 of 2013** were consolidated and determined by the Review Judge (Wilson Masalu Musene, J) in a ruling delivered on 15th May, 2014. This Appeal arises from that ruling.

Specifically with regard to **Civil Review Application No. 203 of 2012,** the assertion that the Judgment in **HCCS No. 114 of 2009** was based on documents that were forgeries and /or those that were fabricated with falsehoods, these documents were the payment vouchers and receipts tendered in evidence as Exhibit P35 at the trial of **HCCS No. 114 of 2009**. They are referred to in paragraph 52 of the Written Statement of Defence at page 73 of the Record of Appeal. It could not therefore be claimed that they were new evidence that

could not, with the exercise of due diligence, have been comprehensively dealt with in all respects, including the alleged forgeries and fabrications, at the trial stage of **HCCS No. 114 of 2009**.

I therefore uphold the decision of the Review Judge that this did not amount to new evidence and as such could not be a ground for review of the Judgment in **HCCS No. 114 of 2009**.

As to **Civil Review Application No. 365 of 2013**, the basis for the review was because the Applicant, now the Appellant in this Appeal, was relying on some findings in the Police Report Reference CID A/62/105 dated 9th March 2012, page 50 of the Record of Appeal. This Report was by an investigation officer of the Uganda Police and was addressed to the Director of Public Prosecutions.

It is unknown how the contents in that Report were obtained and under what circumstances. The contents therein are not on oath and the sources of the information are not in any way subjected to any cross-examination. The said Police Report had been requested for by the Director of Public Prosecutions for purposes only known by the said Director. It was not produced on the orders of any Court of law. The Report therefore cannot be a basis for reviewing a Judgment of Court.

The Judgment of the Court in **HCCS No. 114 of 2009** was delivered on 24th October, 2011, and the Police Report is dated 9th March, 2012. The possibility that the Police Report may contain matters that are intended to have some negative effect on some aspects in the

Judgment cannot be ruled out. A Police Report that was not in existence at the time the trial of **HCCS No. 114 of 2009** was being held and was produced when Judgment had been delivered, cannot be a basis for reviewing that Judgment.

It was therefore, with the greatest of respect, also not correct of the Review Judge to hold as regards the Police Report that:

"This Report as mentioned earlier has not been disputed by any of the Counsel which implies that the Applicant agrees with the issue on the existence of a retainer agreement".

The evidence on record clearly showed that Counsel for both the Appellant and the Respondent pointed out matters they did not agree with in the Report. At any rate, the mere fact that Counsel to a cause do not oppose the Report, which is not the position in this case, does not render such a Police Report to be a valid ground for reviewing a Court a Judgment. It will be setting a very dangerous precedent that when a Court of law delivers a Judgment in a case, then a party to that case, dissatisfied with that Judgment, is allowed to have the Police to carry out some investigations in matters the subject of the Court Judgment, and then that party, on the basis of that Police Report, applies to Court for a review of that Judgment. Such will be contrary to the earlier cited principle of:

"interest republican finis litmus": in the interest of society as a whole, litigation must come to an end."

As already pointed out, the Trial Judge in **HCCS No.114 of 2009** came to the conclusion that the retainer agreement had not been proved because the Appellant failed to adduce to the trial Court any original copy of that agreement. No evidence had also been adduced that an original copy of the same had been deposited with The Law Council as mandatorily required by the Advocates Act. The Notary Public who had provided a Certificate of a Notary Public to that agreement had also not been called as witness by the Appellant to testify before the Trial Court.

The above reasons of the Trial Judge for holding as she did in **HCCS No. 114 of 2009** remained unchallenged either by way of Appeal, as the law provides.

By the Review Judge holding on page 116 Para 2 lines 18-20 of the Record of Appeal that:

"I therefore find that there was retainer agreement on the basis of this report.", meaning the Police Report, the Review Judge with respect, was sitting in appeal and setting aside a holding of a fellow Judge of the High Court. This was wrong in law. The Review Judge was not seized with jurisdiction to do so.

The Review Judge was thus wrong in law to hold at page 118 of the Record of Appeal lines 3-5 that:

"I do hereby grant the respondent's cross-petition for review on the basis of the existence of the retainer agreement".

In conclusion, I find that the Review Judge ought to have dismissed both High Court **Civil Review Applications No. 203 of 2012** and **No. 365 of 2013** as having no merit as the Applicant in each one of the Applications failed to establish a legitimate ground for reviewing the Judgment delivered in **HCCS No. 114 of 2009.**

Accordingly, there was no error committed by the Review Judge not awarding to the Appellant the balance of Ug.shs. 100,000,000/= (Ug.shs. One hundred million). The Respondent's cross-appeal ought to be and is hereby disallowed. Grounds 1 and 2 of the Appeal are so resolved.

As to ground 3, **Section 27** of the **Civil Procedure Act** provides that a successful party to a case should, except for a good reason found by Court, have the costs of the case.

The Review Judge at page 118, lines 8-15 of the Record of Appeal held that in order to maintain a ***"middle point"*** each party had to meet their own costs. The Review Judge was entitled, in the exercise of the discretion vested in him by the said **Section 27** of the **Civil Procedure Act** to order as he did. Ground 3 of the appeal is also accordingly so resolved.

In conclusion grounds 1,2 and 3 of the appeal are disallowed. The Appeal thus stands dismissed.

Since both the appeal and the cross appeal have not been successful, the Appellant and the Respondent are each to bear their respective

costs of this Appeal and those in the Court below in the consolidated **Civil Review Applications No. 203 of 2012** and **No. 365 of 2013.**

The order as to costs in **HCCS No. 114 of 2009** remains undisturbed.

Dated this.....20th.....day of..July.....2021.

REMMY KASULE

Ag, Justice of Appeal.

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 137 OF 2014

R.C. MUNYANI & CO. ADVOCATES ========== APPELLANT

VERSUS

INTERNATIONAL GROUP FOR TECHNICAL COOPERATION WITH THE DEVELOPING COUNTRIES – ACAV- UGANDA ========== RESPONDENT

[An appeal from the decision of the High Court of Uganda at Nakawa before Justice Wilson Masalu dated 15th May 2015 in Civil Review Applications No.203 of 2012 and No. 365 of 2013(consolidated)]

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

HON. LADY JUSTICE MONICA MUGENYI, J.A.

HON. MR. JUSTICE REMMY KASULE, Ag. J.A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Remmy Kasule, Ag. J.A.

I agree with his Judgment and I have nothing to add. Since the Hon. Lady Justice Monica Mugenyi, J.A. also agrees, we hereby order that:-

1. The Appeal is dismissed.
2. The Cross-Appeal is disallowed.
3. Each party shall bear its own costs of this Appeal and in the Court below in the consolidated Civil Review Applications No. 203 of 2012 and No.365 of 2013.
4. The order as to costs in HCCS No. 114 of 2009 remains undisturbed.

It is so ordered.

Dated at **Kampala** this ..... 9th ..... day of ..... Sept ..... 2021.

.....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: KIRYABWIRE; MUGENYI, JJA AND KASULE, AG. JA

CIVIL APPEAL NO. 137 OF 2014

BETWEEN

R. C. MUNYANI & CO. ADVOCATES ..... APPELLANT

AND

INTERNATIONAL GROUP FOR TECHNICAL COOPERATION WITH DEVELOPING COUNTRIES (ASAV) UGANDA ..... RESPONDENT

(Appeal from the Ruling of the High Court of Uganda at Nakawa (Musene, J) in Civil Review Applications No. 203 of 2012 & No. 365 of 2013 (Consolidated), both arising from Civil Suit No. 114 of 2009)

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the lead Judgment of Hon. Justice Remmy Kasule, Ag. JA in this Appeal. I agree with the decision arrived at and the orders therein, and have nothing useful to add.

Dated and delivered at Kampala this ...9th... **day of** ...Sept....., **2021.**

Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL