

- “1. (a) that the defendants source and supply from the local market an Isuzu Elf 2 ton vehicle model 89 – 90 to be delivered to the plaintiff;
- (b) that the defendants pay an agreed amount on the account of costs.

The two terms if observed would be in full and final settlement of the whole claim before court. Alternatively that:

- (a) The defendants to pay to the plaintiff US\$ 4,100 being the refund of the amount paid for the supply of the vehicle.
- (b) The defendants do pay the plaintiff US\$ 3,800 as damages for causing the plaintiff financial loss
- (c) And an agreed amount on the account of costs.

Kindly respond to the terms and we reduce the same into a consent judgment...”

The defendants through their lawyers responded on the 25th of July 2007 and filed the letter on the court record the same day and the letter reads as follows:

“That our client, the 3rd defendant, received a total of US \$ 5000 (Five Thousand dollars) out of which he dispatched to your client a vehicle worth of US 2,500 (Two thousand five hundred dollars) as agreed earlier on and was supposed to dispatch a second vehicle an Isuzu Truck which was never done.

Our client therefore proposes to pay US \$ 2,500 (Two thousand five hundred dollars) and there is also US \$ 500 (Five hundred dollars) which had not been remitted to Dubai which is in our custody.

We also propose that since we are making efforts to settle this matter, each party bears its own costs.”

A further letter by Messrs Luzige – Kamyia, Nakayi and Company Advocates and dated 18th of October 2007 writes as follows: “Our clients recognize \$ 3,400. They have deposited some and finally wish to settle the debt. Another letter from the same firm is dated 12th March 2008 and filed in court on the 12th March 2008 was responding to a hearing date scheduled for the 18th of March 2008 the said lawyers state therein:”

1. That he is willing to settle the claim by paying US \$ 3,400 which he recognizes
2. That each party bears its own costs.

Kindly note that our client has so far deposited \$ 2,500 dollars in partial settlement of the above known figure. Should that be detested, then the suit/case should be referred to Mengo Court as required by law for trial...”

Again the plaintiff responded in a letter dated 21st April 2008 as follows:

“

1. That he will painstakingly accept being paid USD 3,400 leaving out USD 700 that he paid to your client.
2. We propose that since it is over six months since your client deposited USD 2,500, he should now be advised to top up the balance of USD 900 latest (7) days after remitting the amount in your custody.
3. We further propose that we both work out a reasonable amount to be paid by your client as costs as you are aware that we did not render a free service to the plaintiff. In that regard, we propose that Shs 1,000,000/= (Shillings one million only) paid as costs would suffice.”

This letter was filed in court record on the 24th of April 2008.

On the 7th of February 2011 the suit had been fixed for dismissal for want of prosecution. Counsel Katuramu holding brief for Ms Namutebi Alziik appeared for the plaintiff. He informed court that the parties had filed a consent judgment. There was however nothing on the court record and I directed the plaintiff to file a formal consent by the 14th of February 2011. The suit was adjourned to the 14th of February 2011.

On the 8th of February 2011 the plaintiff’s lawyers again wrote a letter to the Defendants lawyers forwarding 4 copies of a written consent document for them to sign. No consent has so far as can be ascertained by court today the 14th of February 2011 at 12.00 noon, been filed on the court record.

I have carefully considered the correspondence and the law. A suit may be dismissed by court under order 17 rule 6 of the Civil Procedure Rules if no steps are taken to further the progress of the suit within 2 years. In this case however there is strong evidence from the correspondence that the parties have settled the suit. What remains is for them to file a formal consent signed by both parties. The problem is that the court directed that this consent should be filed by the 14th of February 2011 when the matter would be mentioned otherwise the court would be inclined to dismiss the suit.

I have however reviewed that decision. Court may proceed to decide a case under order 17 rules 4 of the Civil Procedure Rules where a party fails to do something for the further progress of the suit as directed by court.

In order not to cloud the courts diary with matters which will not come for hearing it is my humble judgment that this suit has been settled by agreement of the parties. The parties have further agreed to file a consent signifying that agreement in court. The court will not wait ad infinitum to receive the express terms of the agreement but takes the entirety of the correspondence between the parties and filed on court record as signifying the terms of the agreement. The last letter of the plaintiffs dated 21st of April 2008 and filed on court record on the 24th of April 2008 shows that the balance left for payment of the plaintiff was US \$ 900. The plaintiff had proposed that this be paid within 7 days and costs of Uganda shillings be paid. The court has no means of knowing whether this money was paid or not.

In the absence of a written consent agreement filed on a court record and signed by both parties or counsel and doing the best I can in the circumstances, the suit is decided against the defendant under the terms of the various correspondence referred to above namely admissions as to liability in the following letters :

1. Letter of the defendants dated 25th of July 2007.
2. Letter of the defendants dated 18th of October 2007,
3. Letter of the defendants dated 12th March 2008 and
4. Letter of the defendants dated 8th of May 2008.
5. Finally the plaintiff's acceptance to receive a top up of US \$ 900 and costs.

In case costs of Uganda shillings 1,000,000/= has not been agreed or settled, the defendant shall pay the taxed costs of the suit. The filing of a formal consent by the parties, if at all, after this judgment shall be treated as a consent variation of this judgment.

Judgment signed and delivered this 14th day of February 2011.

Christopher Madrama

Judge

14th February 2011.

Delivered in Chambers in the presence of:

Christopher Madrama

Judge

14th February 2011