

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT-00-CC-0763-2007.

EQUATOR TOURING SERVICES LIMITED:.....PLAINTIFF

VERSUS

KAMPALA CITY COUNCIL:.....DEFENDANT

BEFORE: HON. LADY JUSTICE HELLEN OBURA

RULING

This case was cause-listed among the cases to be handed under the ongoing backlog clearance session. However, due to some inadvertence the parties were not summoned at the beginning of the session so the matter was not fixed in time. Be that as it may, a hearing notice was taken out and the parties were served to appear today 8/5/2013.

The plaintiff's counsel instead of appearing in person opted to write a letter to notify court that the notice given was too short and they would be seeking an adjournment. No body actually appeared to seek an adjournment. It is now trite that an adjournment cannot be sought by a letter.

Interestingly, the records show that the original plaint in this suit was filed in September 2007 and the written statement of defence (WSD) was filed on 1/10/2007.

The mediation report filed on 9/2/2009 indicates that mediation did not take place due to the busy schedule of the Registrar Mediation who was at the time single-handedly handling court annexed mediation. The matter came before the then trial judge once on 9/4/2009 and counsel for the plaintiff was allowed to make a formal application for filing late reply to the WSD. The matter was fixed for scheduling on 14/5/2009 and the parties were ordered to file a joint scheduling memorandum (JSM) 7 days before then.

On 25/2/2010, before the above orders were complied with, counsel for the plaintiff filed an application for leave to amend the plaint. When the parties appeared before court on 6/9/2010 for the hearing of that application, counsel for the defendant consented to it and the applicant was allowed to file an amended plaint and serve within 7 days from that date.

The court also directed that once filing the amended pleadings were closed, the matter should be referred to the Registrar Mediation for mediation proceedings.

The amended plaint was filed on 24/9/2010 eleven days after the 7 days given by court had lapsed. Worse still, there is no proof that the said amended plaint was served on the defendant because there is neither an affidavit of service on record nor an amended WSD.

Since that time no action has been taken on this file. This is the suit that counsel for the plaintiff is shamelessly seeking to adjourn by letter on the ground that the notice given was too short for them to mobilize their witnesses and the representative of their clients to attend court.

I must observe firstly, that this case has been pending purely by error because it should have been dismissed due to the plaintiff's failure to file and serve that amended plaintiff within the 7 days allowed by court.

Secondly, O17r 6(1) gives this court discretion to dismiss a matter where no action has been taken for a period of two years with a view to proceeding with the case.

I only gave the plaintiff the benefit of the doubt by summoning them to court so that they could have the chance to explain the delay and if at the reasons were convincing this court would have in the interest of justice allowed them to remedy the wrong.

However, since they have opted to scorn the magnanimity of this court by not appearing, I have no option but to dismiss this suit with no order as to costs and I so order.

Dated this 8th day of May 2013.

.....

Hellen Obura

Judge

8/5/2013.

Ruling made in the absence of both parties and their counsel.

Willy Kibabu-Court Clerk.

.....

Judge

8/5/2013.