

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**COMMERCIAL DIVISION**

**HIGH COURT CIVIL SUIT NO.228 OF 2013**

**KAMPALAFINANCIALSERVICES LTD.....**

**PLAINTIFF**

**VERSUS**

**MUWANGAGRACE&**

**ANOTHER.....DEFENDANTS**

**BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO:**

**RULING:**

The plaintiff instituted this suit against the defendants seeking to recover special damages amounting to Ug. Shs.73,600,000/- and for interests, general damages, an order for specific performance on the part of the second defendant and an order to foreclose and sell mortgaged land comprised in leasehold registration volume 1094, folio 12, plot 679 at Maganjo-Kagoma. On the 29<sup>th</sup> day of May 2015, the parties executed a consent on virtually all the issues thus concluding the matter save for the issue of costs which they required the court to determine.

The consent was duly endorsed by the registrar of this court and

on 11<sup>th</sup> June 2015 an hearing date for the determination of the costs by the court was requested by counsel for the defendants with the court on the 30<sup>th</sup> day of September 2015 giving directives to the parties herein to file written arguments in respect to the issue of costs for the consideration by the court with the plaintiff to file its written submissions by the 15<sup>th</sup> October 2015 and likewise the defendants to do so by 23<sup>rd</sup> October 2015 and if there was any rejoinder it was to be

on the court record by the 30<sup>th</sup> of October 2015 this practice being the usual one for this court and which is generally followed for fast and quick disposal of matters.

It is, however, strange to note that while the parties were properly informed by the registrar of this court vide his letter of 2<sup>nd</sup> October, 2015 of their duties to do the needful in respect of filing the necessary submissions in regards to the issue of costs so that the court would do the needful none did so and by the 30<sup>th</sup> of October 2015 which was the last day to receive any possible rejoinder, the records was empty of any submissions, this was certainly an affront to the court directives for under **Order 17 Rule 4 of the Civil Procedure Rules** it is provided that where any party to a suit to whom time has been granted fails to produce his or her evidence or to cause the attendance of his or her witnesses **or to perform any other act necessary to the further progress of the suit for which time has been allowed**, the court may, notwithstanding that default, proceed to decide the suit immediately. (Bold emphasised).

Additionally under **The Constitution (Commercial Court) (Practice) Directions Rule 7** it is provided as follows:

**Rule 7. Noncompliance of parties:**

**“Failure by a party to comply in a timely manner with any order made by the commercial judge in a commercial action shall entitle the judge at his or her own instance to refuse to extend any period of compliance with an order of the court or to dismiss the action or counterclaim in whole or in part or to award costs as the judge thinks fit.”**

Thus this commercial court had issued an effective order which had to be complied with by either of the parties for the quick resolution of the matter before it but unfortunately none of the parties did so inevitably making the court to revert to to the powers granted it in the rules cited above powers to conclude correctly that the parties did not intend further to proceed with the issue of costs and therefore abandoned any further steps to have issues relating to the same heard.

It should be recalled that while a court order is issued , it must be obeyed in full and a party to whom such an order is issued cannot chose either to ignore it or obey it in parts for the consequence would be that the party commits an act of contempt of the court and is liable to have his or her matters not only dismissed but may be subjected to such other penalties including a fine and or imprisonment with this being the position held by Court of Appeal in the case of **Amrit Goyal versus Harichand Goyal and Three Others Court of Appeal Civil Application No. 109 of 2004 [2008] UGCA 6** where the court held that a court order must be obeyed as ordered unless set aside or varied and that it was not a mere technicality that can be ignored with those who ignore a court order choose to do so at their own peril.

Arising from the above , I am indeed satisfied that the parties herein though originally and properly chose to have the major dispute between themselves resolved amicably and but reserved the issue of the costs in the matter for the consideration of the court , when ordered to file on record written submissions within a given time frame to enable the court could finally resolve the pending inter party issue of costs failed and ignored the court order which required them to file the written submissions. The timelines having passed without any reason being given for such failure on record this court considers that the parties are no longer interested in the court resolving the pending issue of costs between themselves and thus accordingly and in the circumstances this court proceeds to dismiss the issue in regard to costs under **Order 17 Rule 4 of the Civil Procedure Rules** and under the provisions of **The Constitution (Commercial Court) (Practice) Directions Rule 7**.

I do so order accordingly.

**HENRY PETER ADONYO**

**JUDGE**

**12<sup>TH</sup> NOVEMBER, 2015**