

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 334 OF 2013

SERUWAGI MOHAMED (Suing through his}

Lawful Attorney Lincoln Mujjuni) }.....PLAINTIFF

VS

YUASA INVESTMENTS LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

This ruling arises from a preliminary objection to the witness statement of the Defendant's witness which had been filed late. On the 20th of April 2016 when this suit was coming for hearing for the first time, the Plaintiff's Counsel objected to witness statements of the Defendant filed late.

The Plaintiff is represented by Counsel Peter Kimanje Nsibambi while the Defendant is represented by Counsel Haguma Daniel.

Peter Kimanje Nsibambi Counsel for the Plaintiff objected to the witness statement of Peter Obwana the Defendants witness on the ground that it was filed out of the timelines set by the court. He submitted that following last appearance in court directions were issued and included the directions for the parties to file written witness statements on the 6th of April 2016 and serve it on the same day on the opposite Counsel. The Defendant did not comply with that direction. Its witness statement was filed a week and a day after on the 14th of April 2016. It was served on the Plaintiff's Counsel the same day contrary to directions. The Plaintiff's Counsel submitted that the statement was not made in good faith. It was an attack on the statement the Plaintiff had filed and served on time. The Plaintiff filed and served his witness statement on the 6th of April

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2016. The response of the Defendant was a challenge to the evidence already submitted and will cause a perversity of justice. He prayed that this court takes judicial notice and weighs that evidence with all the contempt it deserves. Had the witness statement been a pleading, the Plaintiff would have a chance to rebut. But evidence cannot be rebutted and this was the mischief to be avoided. To illustrate Counsel for the Plaintiff submitted that one party listens to evidence and then adduces a rebuttal. That would be the same as a witness who listens in to the testimonies should be treated. There is a case where a witness sat in court, listened to the testimony of other witnesses and objection was taken to the witness testifying in the same case on the ground that his evidence was inadmissible. Alternatively it should be treated with a lot of suspicion and given less value. This was in **Mbazira Adam vs. Greenland Bank in Liquidation HCCS No. 464 of 2008** and Judgment of Hon. Lady Justice Monica K Mugenyi. She held that in those circumstances weight of the evidence of the witness was to be treated in light of the fact that the witness sat in. In the premises the Plaintiffs Counsel prayed that the witness statement filed late is expunged from the record or alternatively given less weight and in the least should be expunged from the record.

The Plaintiffs Counsel further submitted that the Defendant promised to supply him with its list of documents. Two documents are crucial and these were exhibit D1 and D2. To date these documents have not been supplied. He contended that this was calculated to constrain him in the preparation of the Plaintiff's case and achieving the ends of justice. He prayed that the documents should not be considered as part of the defence exhibit and should not be relied on.

In reply Counsel Daniel Haguma agreed that it was true that he filed the Defendants witness statement on the 14th of April 2016 which was way out of the schedule. It was however not true as alleged that this was done deliberately. The Defendant has only one witness Mr. Peter Obwana who unfortunately had gone to visit his rural home visit from where he contracted a bout of malaria hence the delay. Secondly the Defendant's witness statement does not prejudice the Plaintiff's case and all documents included in the witness statement were included. The evidence will be subjected to cross examination and if there is anything which has been not been done by the Defendant, that evidence can be tested. A rejoinder by the Plaintiffs witness would cure any prejudice. The case of **Mbazira Adam vs. Bank of Uganda** is distinguishable because

the facts as presented do not rhyme with the matter before the court. The witness in that case was in court listening to the testimony of the adversary. The Defendant prays that the witness statement is allowed as the Defendant's testimony and with leave of court and that the Defendant's exhibits which have been included are accepted. All these documents were presented to the Plaintiff Counsel on the 14th of April 2016. He reiterated that any prejudice can be cured by the Plaintiffs additional witness statement in rejoinder.

In rejoinder Counsel Peter Kimanje submitted that this court is a court of record and should not allow the lawyers to abuse any orders or directions issued without consequences. They directions are issued for a purpose. It is the Plaintiffs case that there is mischief the directions were intended to avoid. One of them is a witness listening or getting to know the evidence before hand and he using it against another party. These principles cannot be treated lightly. A witness cannot sit in and listen and also come and give evidence. He prayed that this court makes a definitive decision because lawyers should not run away from their duties. Lawyers are supposed to assist the court to reach a just decision. Now the lawyers are using witness statements and the court ought to set a precedent. Once timelines are set they should be adhered to. If a party does not comply with directions they should be locked out.

Counsel further reiterated that the evidence brought is prejudicial and introduces a matter in respect of the vehicle in dispute that it had been sold. They imply that the Plaintiff is chasing the wind. The Defendants witness also attached a sale agreement. He prayed that this court now sets the law.

Additionally the Parties supplied authorities after their submissions and I will consider them as well.

Ruling

I have carefully considered the objection of the Plaintiff's Counsel and submissions of Counsel on the issue. Counsels further supplied authorities on the issue which I have had the opportunity to peruse. The crux of the objection is that the Defendant did not comply with the court directions to file witness statements and serve the same on the opposite party on 6th of April 2016. It was the direction of the court that witness statements should be filed on the same day

and served on the opposite Counsel by both sides on the same day. Consequently 6th April 2016 was the day fixed for the exchange of witness statements and hearing was set for 20 April 2016. Hearing was supposed to proceed by cross-examination of the witnesses on their written witness statements and their re-examination. The Plaintiff had one witness and the Defendant had one witness.

The Defendant's Counsel did not comply with directions to file witness statements on 6 April 2016 and serve the same on the Defendants Counsel the same day. The Plaintiff complied and filed a witness statement on 6 April 2016. The Defendant instead filed its witness statement on 14 April 2016. The Plaintiff claims that he has been prejudiced because allowing the Defendant to file a witness statement much later and after receiving the Plaintiff's witness statement is the same as allowing a witness to listen to other witnesses while in court and subsequently testifying. Because it is the practice of this court to exclude other witnesses other than the parties from being in court while other witnesses testifying before they have testified, Counsel submitted that the rule of fair hearing had been breached. The Defendant was now rebutting the evidence proposed to be adduced by the Plaintiff in the witness statement which had been served on the Defendants Counsel. Of course the Plaintiff has no right of rebuttal evidence either in reply or rejoinder because such rules apply to pleadings and not to evidence.

The Defendants primary response is that the Plaintiff can be accorded an opportunity to rebut the evidence in the witness statement of the Defendant's witnesses which had been filed late namely on 14 April 2016. The Plaintiff's Counsel relied on the case of **Mbaziira Adam vs. Greenland Bank in liquidation HCCS 464 of 2008** before Honourable Lady Justice Monica Mugenyi. She noted that it is a well recognised practice that witnesses cannot sit through proceedings they are expected to testify in. The rule was intended to preserve the credibility of witnesses as persons speaking from the point of knowledge and not the influence of other witness's testimony. She was considering an objection to the testimony of DW1 who sat through the Plaintiff's evidence when the witnesses were testifying. She was unable to establish how long DW1 had sat in the court room. She however permitted DW1 to take the stand on the ground that what is in issue is not admissibility of her evidence that credibility that ought to put it. In other words what is considered is the weight of evidence.

I have further considered other authorities produced by the Defendants Counsel namely **Semande vs. Uganda [1999] 1 EA 321**, a decision of the Supreme Court of Uganda in which the witness was present in court during the testimony of earlier witnesses. There was a unanimous decision of the Supreme Court with a quorum of Wambuzi CJ, Tsekooko, Karokora, Kanyeihamba and Mukasa Kigonyogo JJSC. They noted that there was nothing to show that the witness had been told stay outside the court. Two of the witnesses testified on oath and were extensively cross examined. Particularly they noted that one witness Nantumbwe was subjected to searching cross examination for two days during which she claimed to be telling the truth. It was not suggested to her that her evidence was based or influenced by the prosecution witness's testimony. The court therefore noted that there was a lapse on the part of the trial judge and the state attorney and defence leading to the presence in court of Nantumbwe when the prosecution witnesses were giving evidence. With reference to the earlier decision of **Andiazi versus Republic [1967] EA 813**, such a procedural issue was considered an irregularity requiring the court in considering the evidence to warn itself about the fact of the presence of the witness in court when prior witnesses were testifying. The trial court should have given this fact due allowance in considering the defence of the Appellant and particularly the weight to be given to the evidence of the relevant witness.

In other words the presence of the witness and the hearing of the testimony of the Plaintiffs witnesses leads to a warning that the witness might be influenced by the prosecution witness evidence and tailoring his or her evidence to suit his or her defence. However contrary to the submissions of the Plaintiff's Counsel, that was not a ground for totally excluding the witness statement or the testimony of a witness.

The objection of the Plaintiff's Counsel however goes further than the presence of the Defendant's witness or the likelihood of the Defendant's witness having read the testimony of the Plaintiff which had been filed and served on the Defendants Counsel prior to making the witness statement. I must comment on a matter of ethics. It is unethical for the Defendant's Counsel to read the written testimony of the Plaintiffs witness to the potential Defendants witness before taking down the Defendants witness statement. Counsel takes the written testimony of a witness in Chambers and is duty bound not to coach the witness or even to help

the witness with the testimony but to elicit the testimony from the witness as if he was leading him or her in court. Counsel assists the court by leading the witness in Chambers and only taking down admissible evidence because there is nobody in Chambers to object to whatever the witness may say. If Counsel discusses the written testimony of the witnesses of the opposite Counsel prior to leading his own witness in Chambers to extract the relevant witness statement, I agree that the question of prejudice arises. The direction of the court was to avoid such prejudice by ensuring that the parties relied on the points of agreement and disagreement pursuant to Order 12 rule 1 of the Civil Procedure Rules and embodied in the joint scheduling memorandum of the parties. The purpose of conducting a scheduling conference is to obtain the points of agreement and disagreement by which process issues are narrowed down for trial. The points of disagreement become the controversies on which to lead the evidence of the witnesses. Agreed documents are normally admitted by consent while those documents which are not agreed would be subjected to the ordinary rules of evidence in their production. They would be produced by a competent witness who will testify or lay the foundation for the admission. Foundation is laid in the written testimony. In other words it is not necessary to hear the evidence of the opposite party before adducing evidence from the witnesses of the defence. The most important point is that the controversies are the controversies on which to lead the witnesses who can prove or disprove any relevant fact concerning the controversy before the court. Because the scheduling conference is meant to narrow down the issues and will help the court understand in addition to the pleadings the actual matter in controversy, both parties can present their witness statements out of the outcome of the scheduling conference. If Plaintiffs witness files all their witness statements and serves it on the Defendant and the Defendant uses the opportunity to try to rebut every matter of fact in the written testimony, it would give undue advantage to the Defendant's side because the Plaintiff has no right of rebuttal. Secondly the defence will be better prepared because they would be answering all or any controversy generated by the Plaintiff's witnesses in their written testimonies. In fact the defence would be looking for answers to any adverse testimony of the Plaintiff. This in my view is the mischief the filing of witness statements within the same period is supposed to alleviate. While the decision of the Supreme Court is binding on the effect of the testimony of a witness who could have listened to prior testimonies, this case is unique in some other material ways. It calls into question the ethical practice of the lawyer interviewing a

witness in Chambers. However the ethical practice of the lawyer cannot be questioned unless it is apparent that the lawyer did put to his witnesses the written testimonies of the Plaintiff's witness. Furthermore this objection was made on the assumption that the Defendant had this advantage over the Plaintiff and I leave it at that.

The second important distinction in the Plaintiff's objection is the fact that there is a court direction to file witness statements and serve the same. There was disobedience of these directions. Before considering the basis of the directions, the Defendant's answer through Counsel is that the Defendants witness had travelled up country and feel sick with a bout of malaria hence the delay. For the moment that is the excuse for having filed and served the witness statement late. For the moment I have considered the principle that a court order or direction is supposed to be complied with by all parties. This is apparent from rule 6 (4) of **The Constitution (Commercial Court) (Practice) Directions, Statutory Instrument—Constitutional 6** made under article 133(1)(b) of the Constitution by the Chief Justice and which provides as follows:

“6. Preliminary hearing.

(1) At the discretion of the commercial judge a preliminary hearing may be held.

...

(4) The court will seek to set realistic time limits for the hearing.

Once established, those time limits will be expected to be adhered to and extension will only be granted in special circumstances.”

Time limits were set by the court for the filing and serving of witness statements which were not adhered to. Secondly the Defendant did not apply for extension of time within which to file and serve the witness statement. The court has power under Order 51 rules 6 of the Civil Procedure Rules to enlarge time fixed for doing any act or taking any proceedings by order of court. Time limits are supposed to be adhered to and applications for extension of time would be granted in special circumstances. What are special circumstances is to be established on a case-by-case basis.

Where time limits have been set for the filing and serving of the witness statements, rule 7 of **The Constitution (Commercial Court) (Practice) Directions, Statutory Instrument—Constitutional 6** becomes relevant on account of giving the court additional powers to deal with non-compliance with orders or directions. It provides as follows:

7. 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.

The Plaintiff's Counsel prays for exclusion of the Defendants evidence intended to be adduced through the written testimony of one witness Mr. Peter Obwana. If this statement is not admitted, the Defendant would have no witness. Under rule 7 cited above the court does have power to refuse to extend the period of compliance or if it does so it may, according to the judicial precedents cited above, treat the testimony with the necessary caution after considering all the circumstances of the matter. I have further been fortified by the rules of procedure cited by the Defendant's Counsel from the UK. It deals with late filing of witness statements under the rules of procedure. The rules of procedure are discussed in the case of **Devon & Cornwall Autistic Community Trust (a company limited by guarantee) trading as Spectrum versus Cornwall Council [2015] EWHC 129 (QB)** before Honorable Mr. Justice Green of the High Court of Justice Queens Bench Division. The relevant part of the judgment was that there was an application made by the claimant to serve evidence out of time and vacate the trial date which had been fixed. Following principles in an earlier case of **Mitchell versus News Group Newspapers Ltd [2013] EWCA**, an application for permission to rely upon the evidence was considered an application for relief from the sanction pursuant to the Civil Procedure Rules 3.9. (I note that the rule serves the same purpose as rule 7 of the Constitution (Commercial Court) (Practice) Directions (supra)). They cited the rule provides as follows:

"3.9 – (1) On an application for review from any sanctions imposed for a failure to comply with any rule, practice direction or court order, the court would consider all the

circumstances of the case, so as to enable it to deal justly with the application, including the need;

(a) for litigation to be conducted efficiently and at the proportionate costs; and

(b) to enforce compliance with the rules, practice directions and orders.

(2) An application for relief must be supported by evidence".

Before considering the above cited case any further, I would like to comment about the similarity of the above cited rules with the Ugandan the Constitution (Commercial Court) (Practice) Directions. The purpose of the rules is stipulated by rule 2 (2) thereof as the creation of the commercial court capable of delivering to the commercial community an efficient, expeditious and cost-effective mode of adjudicating disputes that directly and significantly affect the economic, commercial and financial life of Uganda. In order to achieve part of its objectives, it is stipulated in the Rule 5 (2) that:

"The procedure in and progress of a commercial action shall be under the direct control of the commercial judge who will, to the extent possible, be proactive".

So the commercial court judge presiding can issue directions geared towards expeditious disposal of the suit. For that reason when the commercial court judge who is conducting a preliminary hearing under rule 6 of the above cited rules, is expected with the Counsels conducting the Plaintiffs case and the Defendants defence, to set realistic timelines for the hearing. When this is established, those time limits would be expected to be adhered to. In other words directions for the timelines prescribed by the rules are issued under rules 6 (4) of **The Constitution (Commercial Court) (Practice) Directions**. Finally under rule 7 thereof it is envisaged that where a party fails to comply in a timely manner with any order made by the commercial judge in a commercial action, the party may apply for extension of time. However the flipside is that the judge is entitled 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. The Civil Procedure Rules 3.9 of the UK cited above in essence has the same purpose as the Ugandan rules I have set out above. Timelines are supposed

to be adhered to and when not adhered to consequences follow. The rules provide for applications to be made to be relieved from the consequences of non-compliance.

Going back to the case of **Devon & Cornwall Autistic Community Trust (a company limited by guarantee) trading as Spectrum versus Cornwall Council [2015] EWHC 129 (QB)** the honourable Mr. Justice Green reviewed the case of Mitchell that I do not have to consider here but went on to show that the inferior courts had misused the rule in that case in a Draconian manner not in the manner envisaged. Subsequently the Court of Appeal in the case of **Denton versus TW White Ltd [2014] EWCA 906** clarified the principles in the case of Mitchell. Where a party fails to comply with the timelines ordered by the court the following principles would be applied in considering whether to grant an extension of time. The first principle is to identify and assess the seriousness and significance of the failure to comply with any rule, practice, direction or court order. (This principle is embodied in the above cited rule). If the breach is neither serious nor significant, the court is unlikely to need to spend time on the second and third stages of the principles. The second stage is to consider why the default occurred. Lastly the third stage is to evaluate all the circumstances of the case so as to enable the court to deal justly with the application.

Whereas there is no specific rule providing that an application shall be made under The Constitution (Commercial Court) (Practice) Directions, rule 7 thereof envisages an application for extension of time and possibly to be saved from the consequences of non-compliance specified in that rule. In Uganda applications for extension of time are made under Order 51 rules 6 of the Civil Procedure Rules. As far as the Civil Procedure Rules are concerned, it is to be read subject to clarifications set forth in the Constitution (Commercial Court) (Practice) Directions as stipulated by rule 5 (2) thereof. The case of **Devon & Cornwall Autistic Community Trust (a company limited by guarantee) trading as Spectrum versus Cornwall Council [2015] EWHC 129 (QB)** is therefore useful in developing the criteria, though statutory based, for applying rule 7 of the Constitution (Commercial Court) (Practice) Directions.

That notwithstanding the UK Civil Procedure Rules 3.9 deals with relief from sanctions. In Uganda sanctions are provided under rule 7 of the Constitution (Commercial Court) (Practice) Directions.

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The question is whether service of a witness statement late is a matter to be considered on the basis of how grave or trivial the non compliance is.

In the case of **Ali al Hamadani Almaghir Al Hamadani vs. Mohamad Al Khafaf Ahmed Sadek Ali and others**, [2015] EWHC, 38, QB, other Defendants settled the suit but this particular the Defendant who did not settle and had not filed an acknowledgment of service. The court made orders for service of witness statements by the claimants. These statements were served late. The claimants applied accordingly by application notice dated 16 December 2014 seeking an extension of time for compliance with paragraphs 3, 4 and 7 of the Order until 7 November 2014, and permission to rely on the witness statement and transcript.

Mr. Justice Warby held that;

“Failure to comply with a deadline for service of witness statements is a serious and significant breach. Where the parties wish, as experience shows quite commonly they do, to avoid incurring litigation costs whilst engaging in settlement discussions the proper course is to seek an extension of time from the court, before the deadline expires. In that way the court retains control over the process and can guard against the risk that one or both of the parties may lose sight of the need to exchange or serve statements in good time before the trial or other hearing.”

He found that the delay was slightly less than three weeks and, more importantly, the evidence was served more than two months before the trial. Mr. Sabri was by that stage debarred from taking part in the trial by virtue of paragraph 1 of the Master's Order, but could in principle have made an application for relief from that sanction.

In the case of **Durrant v. Chief Constable of Avon and Somerset Constabulary** [2013] EWCA Civ 1624; [2014] 2 All ER 757, the Defendant was in breach of successive orders for the service of its witness statements. On 19 November 2012, Lang J ordered that statements be exchanged by 21 January 2013. Following the Defendant's failure to comply, Mitting J made an unless order on 26 February 2013 requiring statements to be served by 12 March 2013. The Defendant again failed to comply. Eventually, the Defendant served two statements one day late and other statements subsequently. The judge granted relief from sanctions, permitting the

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Defendant to rely on all his late statements, and then adjourned the trial so that the claimant would have time to deal with the new evidence. On appeal, the Court of Appeal, applying the doctrine in the case of **Mitchell** (supra), reversed that decision. In relation to the two statements which were only one day late, Richards LJ delivering the judgment of the court said this at Para 48:

"The position concerning the two witness statements that were served only just out of time is less clear-cut. ... As we have said, the non-compliance in relation to the two statements, taken by itself, might be characterized as trivial, as an instance where "the party has narrowly missed the deadline imposed by the order". The non-compliance becomes more significant, however, when it is seen against the background of the failure to comply with Lang J's earlier order, and the fact that Mitting J, in extending that deadline, had seen fit to specify the sanction for non-compliance... Thus, as was observed at Para 45 of the judgment in Mitchell, "the starting point should be that the sanction has been properly imposed and complies with the overriding objective... Even if on this occasion, as Mr. Payne told us, it was possible to fill the vacated trial slot with other business, the adjournment of a lengthy trial and the need to relist it for another date is detrimental to the efficient conduct of litigation... Taking everything into account, and placing particular weight on the failure to make a prompt application for relief from sanction, we have come to the conclusion that the application for relief should be refused even in relation to the evidence of those two witnesses."

Having the above precedents which are persuasive in view, my conclusion is that the court has discretionary power to permit a witness statement to be filed late upon an application made pursuant to Order 51 rule 6 of the Civil Procedure Rules and seeking to avoid sanction which may be imposed at the discretion of the trial Commercial Court Judge under rule 7 of the **The Constitution (Commercial Court) (Practice) Directions**. In such an application the court takes into account the reasons for late filing and service of witness statement. If there is good cause for filing late the court may not impose the sanction imposed by regulation 7. Furthermore if the non compliance is trivial such as when the witness statement is late by a date or two and there is sufficient cause why it could not be filed in time that can be considered. While the court

exercises discretion to allow the witness statement to be filed, late it may consider the weight of the evidence as if the witness had sat through the testimony of the prior witnesses before writing his or her own statement. Weight of the written witness statement does not go to admissibility. The written witness statement is admissible unless excluded under the first criteria of non compliance without sufficient cause with the directions of court giving the time line for filing and serving witness statement. It is to avoid prejudice to the opposite side on the ground of fair procedure as well as not to give a late witness statement trifling weight on account of late filing that the court gives a particular date for filing and exchanging witness statements after the scheduling conference/preliminary hearing conducted both under the mandatory provisions of Order 12 rule 1 of the Civil Procedure Rules as well as regulation 6 of the **Constitution (Commercial Court) (Practice) Directions**.

In the peculiar circumstances of this case the Plaintiffs Counsel objected to the late filing under the criteria for compliance with court orders and directions under regulation 7. In the alternative he prayed that the witness testimony be given trifling weight. I have considered the above principles and the first conclusion is that the Defendants Counsel never sought leave of court before filing the witness statement late. I agree with the Plaintiffs Counsel that the court should not encourage the practice of laxity by permitting parties to get away with late filing. Time lines set by the court are to be taken seriously in light to the mandate of the court to conduct commercial causes expeditiously. Regulation 7 of **The Constitution (Commercial Court) (Practice) Directions** ensures that court directions are not taken lightly when there is noncompliance. The Applicant is obliged to give special circumstances for extension of time to file. The court will consider whether there are special circumstances under rule 6 (4) of **The Constitution (Commercial Court) (Practice) Directions**. Such circumstances are considered when there is an application by the noncompliant party. The Defendants Counsel purported to make this application after an objection had been made. This is unacceptable. The application ought to have been made at the commencement of the proceeding. The effect of the conduct of the defence is that the hearing date of 20th of April 2016 was not utilized. That date was reserved for hearing and it meant that other deserving litigants did not have a date. Whenever cases are scheduled for hearing and they do not take off, it means two things; the date is unavailable to other suits at the expense of the public. Secondly if the matter is adjourned because it is the only

date, the next hearing date may be over three months away. This whittles down the purpose of rule 2 (2) of **The Constitution (Commercial Court) (Practice) Directions** for the commercial court to deliver expeditious justice. It further contributes to rising backlog. It also increases the costs of litigation.

That notwithstanding if the only Defendant's witness statement is excluded on the first criteria the matter would proceed without any witness from the defence. Procedural rules are handmaidens of justice. The rules were not meant to exclude the defence for failure to file witness statements. For that matter the witness statement will be considered under the criteria of whether it should be given trifling weight. Exercising the discretionary power of the court under rule 7 of **The Constitution (Commercial Court) (Practice) Directions**, I hold that the Plaintiffs objection has merit but decline to strike out the witness statement. Instead the Plaintiff is awarded costs as a penalty or sanction under rule 7 and the Defendant is further permitted under rule 6 of Order 51 of the Civil Procedure Rules to serve the witness statement late. The witness statement having been filed and served albeit 8 days late, the period for filing and service is extended and the witness statement filed on court record and served will be admitted in evidence and the filing late thereof is validated by enlargement of time to accommodate the late filing. The extension of time is with costs to the Plaintiff under order 51 rule 6 of the Civil Procedure Rules.

Last but not least on the ground of concession of the Defendant's Counsel the Plaintiff may file a supplementary witness statement responding to any new area of controversy which could have emerged from the Defendants witness statement. The statement shall be filed and served within 7 days from the date of this order and before the hearing date of 25th May 2016 if the Plaintiff deemed it necessary.

Finally I wish to comment that criteria for evaluation of Evidence set by the Supreme Court in **Semande vs. Uganda [1999] 1 EA 321** as well as the principles in **Andiazi vs. Republic [1967] EA 813** can only be considered after adducing evidence and considering all the circumstances as to what weight should be given to the testimony filed late.

Ruling delivered in open court on the 13th of May 2016

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Counsel Haguma Daniel for the Defendant

No representative of Defendant is present

Plaintiff is not in court and neither is his Counsel.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

13th May 2016