THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 151 OF 2018

(ARISING FROM HCCS NO. 607 OF 2014

ARVIND PATEL :: APPLICANT

VERSUS

NATIONAL RESISTANCE MOVEMENT::::::::::::::::::::RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

RULING

The Applicant Arvind Patel filed this Application against National Resistance Movement herein referred to as the Respondent seeking orders that; the order dismissing Civil Suit No. 607 of 2014 be set aside , Civil Suit No. 607 of 2014 be reinstated and costs of the application.

This Application is premised on the following:

1. That the Applicant and his advocate were prevented by sufficient cause from proceeding with the prosecution of Civil Suit No. 607 of 2014.
2. That the Applicant honestly intended to prosecute this matter in Court but had earlier sought to amend his pleadings before the hearing of the main suit.
3. That the Applicant had filed Misc. Application No. 777 of 2017 in which he sought leave to amend his pleadings so as to include new and important evidence that was not previously in his possession.
4. That the intended amendments were necessary for purposes of determining the real questions in controversy brought before this court.
5. That the Civil Suit No. 607 of 2014 which was dismissed was for recovery of UGX 5,445,199,586/= being the outstanding amount owed to the Plaintiff by the Defendant and it is equally important that the said suit be heard on its merits and;

6. The hearing of this Application for reinstatement of Civil Suit No. 607 of 2014 will not in any way prejudice the Respondent.

The background to the Application is that the Applicant filed suit No.607 of 2014 seeking recovery of Shs. 5,440,000,000/= as money loaned to the Defendant.

The suit was filed on 29.08.2014 but it was not until 25.08.2016 that a joint scheduling memo was filed.

Scheduling took place on 30.05.2017. Parties were directed to file Witness Statements by 30.06.2017. Hearing was fixed for 13.07.2017. Although none of the parties kept the timeline for filing the witness statements, the Defendant filed her witness statements on 07.07.2017.
The Plaintiff never filed.

It was realized later that on the 12th July 2017, a day before the hearing of the suit, she filed an application for leave to amend.

It seems the Applicant did not intend to proceed with the application because on the 13th July. 2017 when they appeared, instead of fixing the application, both parties fixed the suit itself. They wrote.

"*By consent of both counsel and parties let the matter be adjourned to 26th Sept. 2017 at 9:00 for Hearing Submissions*."

Both learned advocates signed the consent.

In my view if the applicant was interested in the Application, he would have fixed it for hearing. As it is, he fixed the suit.

Although the parties fixed the suit for hearing still the Applicant did not take any steps to file witness statements, he had been asked to file far back on 30.05.2017.

On the 26th September 2017 the matter did not proceed and was adjourned again.

It came up for hearing on 06.02.2018. Still the Applicant had not filed the witness statements. Needless to say no attempts were even made to fix the long forgotten application.

The Court decided that hearing of the suit proceeds as fixed. The Plaintiff was allowed to proceed orally without witness statements. He refused. Court concluded that the refusal to file the witness statements, non fixture of the application and refusal to proceed amounted to abuse of Court process. It therefore exercised its inherent powers to prevent abuse of the process and for that purpose dismissed the suit under Section 17 (2) of the Judicature Act.

It is this dismissal which the Applicant seeks to set aside.

The suit was dismissed after the Court had given the Applicant every opportunity to be heard. Even where the Court had directed the filing of witness statements and allowed the Applicant several months to do so, it went out of its way to allow him to proceed without witness statements but he still rejected that opportunity to prosecute the suit.

Where a Plaintiff is present in Court and he refuses to proceed with his suit, the dismissal of the suit under S. 17 (2) of the Judicature Act is a decision on merit which gives rise to a decree.

I have had opportunity to read ***Kibugumu Patrick v. Aisha Mulungi & Anor. MA. 455/2014*** and I would not agree less with my learned brother Andrew Bashaija when he wrote;

"*It is further my view that section 17 (2) Judicature Act was intended by the Legislature to operate as a statutory tool in the hands of court to prevent abuse of its process by curtailing delays in trials…. In that case no amount of subsequent action would revive the suit and an order on those grounds is a final decree that is only appealable*."

The foregoing is to the effect that a dismissal for disobedience or delay operates as an adjudication on the merits and therefore bars the Applicant or Plaintiff from reinstating the suit.

In my view the Application to set aside the dismissal is misplaced, as the channel open for the Applicant is that of appeal. That being the case, this application is dismissed with costs.

Dated at Kampala this 16th day of October 2018

HON. JUSTICE DAVID WANGUTUSI
JUDGE