



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

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**CONSOLIDATED CIVIL SUIT No. 464 OF 2018 & CIVIL SUIT
No. 036 OF 2019**

HARUNA SSENTONGO ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

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VERSUS

ORIENT BANK LTD ::::::::::::::::::::::::::::::::::::::: DEFENDANT

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BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE

RULING

A. INTRODUCTION

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1. On 13th May 2022 when this matter came up for mention, Mr Oine Ronald, Counsel for the Defendant sought leave of this honourable Court for the Defendant to be accorded the right to file written submissions in rejoinder to the Plaintiff's belatedly filed written submissions.

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B. BACKGROUND

- 5 2. The context of this Application and the prayer by Counsel Oine, for the Defendants, is that whereas the Plaintiff was directed by this honourable Court to file his written submissions on 25th March 2022 and the Defendant was supposed to file its written submissions on 19th April 2022 and then a rejoinder by the Plaintiff on 3rd May 2022, the Plaintiff did not comply with the Court's directives, while on 5th May 10 2022 the Defendant's counsel filed his written submissions and served the Plaintiff's counsel.
- 15 3. The Plaintiff's lawyers subsequently filed their written submissions on 9th May 2022, 4 days after the Defendant's lawyers filed had served them with their written submissions.
- 20 4. In his submissions, Counsel Oine contended that the Plaintiff, by his conduct, negated his right to re-join and therefore since the Defendants filed their written submissions first, and served the Plaintiff's Counsel who then subsequently filed his written submissions after he had studied the defendant's submissions, a right to re-join should be accorded to the Defendant.
- 25 5. In reply Counsel Kimara Arnold, for the Plaintiff, opposed the application to re-join as sought by Counsel for the Defendant. He submitted that at the time Counsel for the Defendant filed his written submissions, he had been notified through a phone call that the Plaintiff was to file his written submissions outside 30 the timelines Court had set. He contended that the Plaintiff's submissions filed on 9th May 2022 are not a response to the Defendant's submissions and thus the Defendant would not be prejudiced in terms of addressing Court on matters contested in the submissions. Counsel Kimara proposed that

the Court can accord an opportunity to the Defendant to file supplementary submissions on any matter which he may have justifiably not had an opportunity to address in the Defendant's submissions. He cited the case of **Banco Arabe Espaniol vs. Bank of Uganda SCCA No. 8 of 1998** where the Supreme Court held that the blunders of an advocate should not be visited upon a litigant.

6. He then argued that a denial to the Plaintiff to file a rejoinder would not only be retributive but would also deny the Plaintiff the opportunity in fairness and would not be in the interest of justice. He prayed that the Plaintiff's right of rejoinder be preserved by this honourable Court as it would not occasion any injustice on the Defendant.

7. In rejoinder Counsel Ronald Oine submitted that the Plaintiff's Counsel did not deny that he received the Defendant's written submissions on 5th May 2022 read them for 4 days and then filed submissions which in actual sense are a reply to the Defendant's written submissions. He argued that up to the morning of 19th May 2022 just before the case was called, the Plaintiff's lawyer had not even served them with the written submissions, which is an abuse of Court process.

8. On the proposal to file supplementary submissions, Counsel Oine submitted that, his written submissions filed on 5th May 2022 covered all issues raised and that there is nothing he had forgotten, that would require to be supplemented upon. He prayed that given the circumstances, it is only practical that leave be granted to the Defendant to re-join to the late submissions of the Plaintiff.

C. DETERMINATION BY COURT

5 9. I have carefully considered the oral submissions of Counsel for the Defendant, the reply by Counsel for the Plaintiff and the legal authorities relating to the contention presented to this honourable Court.

10 10. Right from inception, after both parties had closed their respective cases and were issued with directives on how they would file their respective submissions, the parties did not adhere to the times lines as was prescribed by Court. Initially, the delay was due to delay by Court to avail the typed record of proceedings which was cured but subsequently, the plaintiff omitted to file and serve his
15 submissions until a few days after the defendants had filed and served their submissions on him.

20 11. There is nothing on record to show that the plaintiff ever asked for extension of time to file when he did, nor that he sought for Court's leave to validate the belatedly filed submissions.

25 12. **Rule 5 (1) of the Constitution (Commercial Court) (Practice) Directions S.I No. 6** provides that the ordinary rules of the High Court will apply to all commercial actions, subject to the clarifications set forth in this Practice Direction.

30 13. In their book, "**Civil Procedure & Practice in Uganda**" by **Justice Musa Ssekaana and Salima N. Ssekaana** at page 260, the learned authors state that;

"After all parties have called witnesses, the case is closed, and they have to make their submissions to the Court. The submissions may either be oral or written. Usually, the plaintiff begins and then the defendant submits later.

.... At the close of the plaintiff's submissions, the defendant, or his/her advocate replies by also making submissions and lastly the advocate who submitted first may reply, if he/she wishes..... Once the Court allows the parties to file written submissions it will set a specific period of timetable for filing submissions.”

14. **Rule 5 (2) of the Constitution (Commercial Court)**

(Practice) Directions S.I No. 6 provides 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. This honourable Court issued directives to the Plaintiff and the Defendants' Counsel to file written submissions and set timelines to be followed.

15. The long-established Court practice and procedure in civil matters is that the Plaintiff submits or files his or her written submissions first, the Defendant replies to the Plaintiff's submissions and subsequently the Plaintiff may re-join or file written submissions in rejoinder. In the present case however, it would appear that the Defendant, out of exasperation after a long wait for the plaintiff's submissions, decided to file and serve their submissions before receiving the plaintiff's submissions; whereupon the plaintiff, 4 days later, belatedly served his submissions on the defendants.

16. Whereas the leave as sought by the Defendant's counsel would appear to be unconventional in the context of established Court practice and procedure in civil matters, in the instant circumstances this action would seem not to be without cause.

17. According to the guidelines by Court, the Plaintiff was required to file his written submissions by Friday 25th March 2022, the Defendant was required to file his reply to the Plaintiff's submissions by Tuesday 19th April 2022 and a rejoinder by the Plaintiff if any by 3rd May 2022. The timelines as set by Court were not adhered to and parties did not move Court to extend the time within which to file their respective written submissions. Indeed, the Plaintiff filed his submissions on the morning of 19th May 2022, a few hours before the matter would be called for mention.

18. Counsel for the Plaintiff ought to have formally applied to Court for an extension of the timelines or issuance of a new schedule for the filing of written submission in order to avoid the procedural dilemma and conundrum that has now been occasioned by the plaintiff filing his submissions after he had been served with the defendants' submissions.

19. **Rule 7 of the Constitution (Commercial Court) (Practice) Directions S.I No. 6** stipulates that failure by a party to comply in a timely manner with any order made by the Commercial Court 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. (*emphasis added*)

20. The above rule, when applied to the letter, empowers this honourable Court to reject the Plaintiff's written submissions for noncompliance with the directives of this honourable Court.

21. There is nothing on record to show that the plaintiff ever asked for extension of time to file when he did nor that he sought for Court's leave to validate the belatedly filed submissions.

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22. Counsel for the Plaintiff inferred that what had transpired was as a result of a mistake on his part. He cited the case of **Banco Espaniol V Bank of Uganda SCCA No. 8 of 1998** to plead that the repercussions of his mistake as Counsel should not be occasioned on the litigant.

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23. This Court is aware, from the submissions of Plaintiff Counsel, that instead of applying for leave of Court to file outside the time prescribed by Court, he elected to make a phone call to the defendants' lawyers. Plaintiff Counsel is a seasoned litigation lawyer who has severally appeared in this and higher Courts, it is therefore unfathomable that he could have been acting under the mistaken belief that a call to the defendants' lawyer would resolve the anomaly.

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24. Whereas the duty is on Counsel to file submissions and not on the witnesses- see **Esero Kasule v Attorney General, MA No 688 OF 2014**, the issue in the instant case is not for enlargement of time nor for validation of a procedural irregularity by which the plaintiff filed their submissions after he had received and possibly even, as alleged by defence Counsel, perused the defendants' submissions before making his own. Neither is it, as I understood it to be from the defendant's submissions, a request for the plaintiffs to be denied a right of rejoinder. The issue for determination by this Court is whether the defendants should be granted a rejoinder to the plaintiff's submissions which were un-procedurally filed and served.

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25. **S.98 of the Civil Procedures Act** bestows inherent powers on this Court to make such orders as are necessary for the ends of justice and to prevent abuse of Court process, while **S.33 Judicature Act** mandates this Court to grant such remedies as a party may be entitled to so that as far as possible all matters in controversy between the parties may be completely and finally determined.

26. Premised on the forgoing aspirations of S.98 CPA and S33 of the Judicature Act, the inimitable situation occasioned by the Plaintiff's failure to adhere to the earlier issued timelines can only be redressed by allowing the Defendants' lawyer to file further submissions. However, as he rightly argued, these submissions cannot simply be "*supplementary submissions*", but should be such as will address the grief pointed out by Counsel for the Defendant when making this Application for leave to re-join.

27. In the premise, the leave sought by Counsel for the Defendants is granted and Court orders as follows;

I. Counsel for the Defendant shall file written submissions in rejoinder.

II. The submissions shall be limited to only addressing those matters arising from the Plaintiff's submissions which are not covered in the Defendants written submissions that were filed on 5th May 2022.

III. The Defendant's written submissions in rejoinder shall be filed in this honourable Court within a

period of 14 (fourteen) days from the date of this ruling.

5 IV. A rejoinder by the Plaintiff, if any, will be filed within 5 days from the 15th day of the date hereof.

10 Before I take leave of this matter, I would like to register this Court's displeasure at the unconventional actions that gave rise to this Application. These actions, which were contrary to established and lawful procedure entailed the election to withhold Plaintiff's submissions up to the morning of the date of Mention, and most regrettably after Plaintiff's side had already received and possibly perused the defendant's submissions, to file and serve his own submissions. Such conduct does not impute a lack of knowledge of what ought to have been done, in the first instance, to cure belated filing of submission, but may certainly inform formation of perceptions about the ethical fabric of the actor.

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20 Delivered at Kampala, this 19th day of May 2022.

Richard Wejuli Wabwire
JUDGE

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