THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT NAKAWA

CIVIL SUIT NO 201 OF 2004

OMO SIMON…………………………….………………………PLAINTIFF

VERSUS

AMON TOMUSANGE…………………………………………..DEFENDANT

BEFORE HON. JUSTICE GIDEON TINYINONDI:

RULING:

On 23/09/2004 the Plaintiff filed the present suit seeking special and general damages for wrongful and malicious eviction of him by the Defendant, damages for loss of property and wrongful detention and trespass to his goods.

On 19/10/2004 the Defendant filed a written statement of defence with a counter claim. On 26/11/2004 the Plaintiff/Defendant filed a reply to the written statement of defence and counter claim.

On 13/04/2006 the matter came up for hearing. Counsel for the Defendant applied to be discharged from the suit because since drafting the written statement of defence he had never again set eyes on the Defendant. Court obliged this application.

Thereafter Counsel for the Plaintiff informed court that on 14/10/2004 the Plaintiff obtained an interlocutory judgement. He applied for the Defendant's written statement of defence struck off on account of it having been filed out of time and without court's leave or consent by the Plaintiff. I reserved my ruling which I now give. If the Plaintiff had pressed for formal proof following the Registrar's order of 14/10/2004 court would have regarded him as seriously aggrieved and seeking justice. The Plaintiff did not but went ahead to file the said reply.

In the circumstances I will cite the judgment in ***Petro Kasule Vs Daniel S S Kato: (C A 13/51) [1952 – 1956] Vii 4 Lr*** where it was stated:

> "The question should be, I think, given all that, how may justice best be done. Lord Justice Bowen in ***Cropper v. Smith* [1884] 26 Ch. Div. At p. 710** said "I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party." and
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> "It seems to me that where a defendant though in default appears before the Court and indicates that he has a defence, and shows the Court what that defence is, then if the defence disclosed has merits, and the plaintiff can reasonably be compensated by costs for the delay, it is proper for the Court to take steps to try the case upon the merits, both sides being given a hearing. There are a number of English cases which indicate how slow the Court should be to shut out a defendant who, though in default, has shown a defence and seeks to defend." and "In my view that is not the sole matter which must be considered in cases of this kind. The nature of the action should be considered, the defence if one has been brought to the notice of the Court, however irregularly, should be considered, the question as to whether the plaintiff can reasonably be compensated by costs for any delay occasioned should be considered, and finally I think it should always be remembered that to deny the subject a hearing should be the last resort of a Court."[Emphasis is mine]

In this vein I will allow the Defendant to defend this suit but award costs fixed at Shs. 200,000/= to the Plaintiff in any event.

Sgd: Gideon Tinyinondi
JUDGE.