

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL 0433 OF 2006

KAMPALA INTERNATIONAL UNIVERSITY LTD PLAINTIFF

VERSUS

TORORO CEMENT LTD
UGANDA REVENUE AUTHORITY
THE ATTORNEY GENERAL DEFENDANTS

Civil Application-Dismissal of suit for want of prosecution-Order 17rule 6(1)of the civil procedure rules-No application or step taken within two years-Interim order-temporary injunction-

***Held**-Suit was dismissed for want of prosecution.*

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA

RULING

This matter came before me today on a notice for the plaintiff to show cause why the suit should not be dismissed for want of prosecution.

At the hearing the plaintiff was represented by Dennis Sembuya of Nangwala Rezida and Company Advocates for the plaintiff

Noah Mwesigwa appeared for the first defendant and also held brief for Patricia Mutesi for the Attorney General.

Mugabi Mathew holding brief for Ali Sekatawa appeared for the second Defendant.

Ojambo Makoha Court clerk in court

Counsel Dennis submitted that this matter had not been heard because of insufficiency of judges. Secondly that the plaintiff has changed instructions to Nangwala Rezida and Company

Advocates. Instructions were given this morning. He sought the indulgence of court of to file a notice of change of advocates and to fix the case for hearing.

Noah Mwesigwa in reply submitted that firstly it is not correct that this matter had not proceeded due to insufficiency of judges. Around the time the case was filed the plaintiff filed another suit against another manufacturer and proceeded with it. This was Kampala International University vs. Hima Cement. This particular case was merely filed and abandoned for the last five years. Secondly he submitted that his colleague was appearing for the first time and says he is newly instructed, yet there is no notice of change of advocates filed on court record. He submitted that the plaintiff's new counsel should have filed it before or come with his client to verify his instructions. Lastly, in the alternative and without prejudice he submitted that the least the plaintiff's counsel could do is to proceed given the chronology of this file. He prayed that I dismiss the suit for want of prosecution.

Mugabi Mathew associated himself with the submissions of Noah Mwesigwa and added that no sufficient cause has been shown by counsel for failure to proceed for the last five years and that order 17 rule 6 (1) of the CPR is instructive. Where no application is made or step taken within two years, the suit may be dismissed. It is on record that neither an application nor a step has been taken for five years.

He submitted that the court should not be held at ransom by parties like the plaintiff in this case who turn up at the last minute and come up with what are insufficient grounds to adjourn. No sufficient cause has been shown and that the parties should be mindful of the backlog the courts are facing.

Dennis in rejoinder submitted that the counsel on record is Mr. Kavuma Kabenge. That his instructions today are not to proceed. In courtroom he pointed out Christine Nabirye, who, he submitted had just been instructed this morning and had made effort to appear showing that the plaintiff has interest.

I stood the matter over up to 1100 am to give my ruling and to enable me to peruse the court record.

This suit was filed on the on the 24th of July, 2006. In the suit, the plaintiff claims the sum of Uganda shillings 2,100,000,000/= as damages and costs. Paragraph 10 of the plaint shows that shillings 2,199,324, 500/= was paid by the government of Uganda to Uganda Revenue Authority as the VAT contribution or component of the transaction. On the 6th of August, 2007 the plaintiff filed an application for an interim order restraining the respondents/defendant's or their agents, servants or workmen from interfering with the business of the applicant by blocking its accounts and or distressing its properties until final disposal of the main suit. The registrar granted an interim order by consent of the parties blocking tax recovery proceedings on the 17th of August 2007 pending the hearing of miscellaneous application 530 of 2007. This was the main application for a temporary injunction. The application was mentioned on the 5th of September, 2007. The counsel for the plaintiff withdrew the application for a temporary injunction and consequently the interim order also lapsed. The presiding judge Hon. Mr. Justice Egonda Ntende recused himself from handling cases involving Kampala International University. Mediation proceedings were last handled in the year 2007. Since that time, no efforts were made or step taken in furtherance of the prosecution of the suit. Order 17 rule 6 sub rule 1 CPR provides: "in any case, not otherwise provided for, in which no application is made or step taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit be dismissed."

I have addressed myself to the facts of this case. Since about September 2007 no application or step has been taken with a view to a proceeding with the suit. It is inconceivable that a plaintiff who is claiming over Uganda shillings 2,000,000,000 would sit back and wait for a period of about three years without pursuing his or her claim. The Commercial Court is a serious court for the business community and expected to deliver speedy justice. Someone with a claim of the magnitude stated in the plaint should not be kept waiting for long. Claims attract interest. In the same vein a party who files a suit should show interest in ensuring that the suit progresses. In this case the plaintiff just sat back. The last correspondence on the file from the plaintiff's counsel is of August 2007. The fact that this morning, the plaintiff has instructed new counsel to take up the matter which had been fixed by court does not show that the plaintiff was serious with the prosecution of this case. The instruction of counsel does not excuse the previous period where the plaintiff just sat back without taking any steps. Cause shown should explain why steps have not been taken within that period. The new counsel is not to blame. In the circumstances,

exercising my discretion under order 17 rule six sub rule 1 I find that no sufficient cause has been shown why no application or steps have been taken within 2 years with a view to proceeding with the suit and I accordingly dismiss the suit with costs for want of prosecution.

Christopher Madrama

Judge

Ruling delivered this 28th day of February 2011 in the presence of the Counsel cited above.

Christopher Madrama

Judge