

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. APPLICATION NO. 395 OF 2014
(ARISING FROM CIVIL SUIT NO. 101 OF 2014)

HUSSEIN BADDA ::
APPLICANT

VERSUS

IGANGA TALKIES LTD. ::
RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under Order 17 Rule 5 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act.

It seeks orders that the head suit Civil suit No. 101/2014 be dismissed for want of prosecution.

The Applicants in both the Notice of Motion and the affidavit in support submit that it is almost 4 months since the delivery of the Applicant's defences and the Respondents have not set down the suit for hearing.

The above fact is not in dispute so there is no need to go into details as to when the suit and defences were filed.

The Respondents filed an affidavit in reply which the Applicants have objected to as having been filed out of time without leave of Court.

Counsel for the Respondents made an oral Application that it should be allowed even if it was filed out of time.

I am unable to allow that request for the simple reason that:

1. There is no justification given for the said late filing.
2. Even if I allowed it, the deponent does not show that he had the capacity to depone the affidavit. He claims he is the Attorney of the Respondents when no Powers of Attorney have been filed to that effect.

It also contains falsehoods which are visible for all to see. It is claimed that the head suit has been already fixed for hearing.

There is nothing on record to that effect. The said affidavit is struck out for being incurably defective.

That leaves the Application which I will now proceed to consider.

Order 17 Rule 5 of the Civil Procedure Rules provides as follows:

“If a Plaintiff does not within eight weeks from the delivery of any defence or, where counter claim is pleaded, then within ten weeks from the delivery of the Counter claim, set down the suit for hearing then the Defendant may either set down the suit for hearing or apply to the Court to dismiss the suit for want of prosecution, and on hearing the Application the Court may order the suit to be dismissed accordingly, or may make such order and on such terms, as the Court may deem just.”

While it is true that the suit should be set down for hearing, the wording of the above provisions clearly indicates that it is not mandatory that the case should be dismissed as soon as an Application under this rule is made.

The same Rule also has other options. It allows the Applicant/Defendant to have the matter set down for hearing if the Plaintiff has failed to do so.

Further the Court also has discretion to make orders that it may deem just.

First I observe that this provision of law was made before **S.I 10/2013 - The Judicature (Mediation) Rules 2013** were made.

Rule 2 thereof provides;

“These Rules apply to all civil actions filed in or referred to the High Court and any subordinate to the High Court.”

Rule 4 (1) thereof makes it mandatory for every suit to be subject to mediation, before proceeding for trial.

The mediation Rules provide an elaborate process that adds on to the normal time frames a period of not less than 75 days. And it is mandatory to mediate.

The question then is whether the period of having the suit fixed for hearing within 8 weeks is still relevant in view of the mediation process.

Secondly, even if the Plaintiff applied for hearing as provided for within 8 weeks, it is unlikely that the case would be heard within the fixed time frames given the huge case load in this Court. That is not suggesting that the rules of procedure be thrown out of the window. No. The practical reality is that this case would still be pending hearing even if it was given a date. The Applicant/Defendant would have expedited matters if instead of seeking dismissal of the suit, they applied to have it set down for hearing so that it is disposed of on its merits once and for all instead of on technicalities which brings into play **Article 126 (2) (e) of the Constitution.**

Thirdly, a look at the Plaint and the defences so far on record reveals that this is a serious dispute that should be heard on its merits and decided accordingly. Dismissing this matter for want of prosecution is not going to determine the matter.

Let the rights of the parties be determined and the parties given a hearing instead of stifling them.

It is therefore my finding that this Application is:

- i) Premature in view of the Mediation Rules (SI. 10/2013) and
- ii) Let substantive justice be administered.

The Application is disallowed.

It is ordered as follows:

1. The suit is to be referred to the Registrar of this Court for Mediation. In that respect the Plaintiff is to take the necessary steps to ensure the mediation process starts.

This must be done within the next 30 days in any case not later than 5/6/2015. Should this order not be complied with, the head suit will be dismissed without further notice.

2. Should the mediation fail then this matter will be brought up for hearing on 9/9/2015.
3. Each party will meet their own costs.

Godfrey Namundi

JUDGE

8/5/2015