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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
CIVIL SUIT NO. 51 OF 2014

BASHIR BAGALALIWO BALOZI:.....PLAINTIFF

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VERSUS

GEORGE KABYEMERA :.....DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

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The Plaintiff, Bashir Bagalaaliwo Balozi, filed this suit against George Kabyemera, the Defendant, seeking for recovery of property, general damages, interest, mesne profits and costs of this suit.

Background to the suit

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The brief background to this suit is that the Plaintiff and the Defendant entered into business ventures. During the course of their dealings, the Plaintiff left his properties at premises rented by the defendant. It is the Plaintiff’s claim that the defendant was left in the care and custody of his properties which included Motor vehicles, Auto Spare Parts, farm equipment and some other personal effects, all valued at over Ugx. 400,000,000/= (four hundred million shillings only). That when the plaintiff requested for his properties from the defendant, the defendant refused to hand them over which caused the plaintiff to suffer loss, hence this suit.

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Representation

Learned Counsel Serwadda Mouhsin appeared for the Plaintiff while Counsel Tumwesigye Louis was for the Defendant.

When the matter came up for hearing of the Defendant's case, Counsel sought to tender in evidence a letter titled "Without Prejudice". Counsel for the Plaintiff objected to tendering in court the letter as exhibit on grounds that letters so marked are not admissible as evidence in court. He relied on the case of ***Rush & Tompkins –v- GLC [1989] AC 1280 at 1301***, where the court that;

"in general, the "without prejudice" rule made inadmissible in any subsequent litigation connected with the same subject matter proof of any admissions made with a genuine intention to reach a settlement; and that admissions made to reach settlement with a different party within the same litigation were also inadmissible whether or not settlement was reached with that party."

There were no submissions in reply by Counsel for the Defendant.

Analysis

I have looked at the case authority provided by Counsel for the Plaintiff. I have also looked at the case of ***Ocean bulk Shipping and Trading SA –v- TMT Asia Limited and 3 others [2010] UKSC 44***, on the legal principles of the phrase "Without Prejudice." The Supreme Court of the United Kingdom, noted that: -

"The approach to "without prejudice" negotiations and their effect has undergone significant development over the years. Thus the "without prejudice" principle, or, as it is commonly called, the "without prejudice" rule, initially focused on the case where negotiations between two parties were regarded as without prejudice to the position of each of the parties in the event that the negotiations failed. The essential purpose of the original rule was that, if the negotiations failed and the dispute proceeded, neither party should be able to rely upon admissions made by the other in the course of the negotiations. The underlying principle of the rule was that parties would be more likely to speak frankly if nothing they said could subsequently be relied upon and that, as a result, they would be more likely to settle their dispute".

55 In ***Walker –v- Wilsher (1889) 23 QBD 335 at 337 Lindley LJ***, while referring to the words; “*without prejudice*” noted that;

“*I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted, a complete contract is established, and the letter, although written without prejudice,*

60 *operates to alter the old state of things and to establish a new one.*”

In the case of ***Lochab Transport Ltd –v- Kenya Arab Orient Insurance Ltd [1986] eKLR***, it was held that: -

“*if an offer is made “without prejudice”, evidence cannot be given on this offer. If this offer is accepted, a contract is concluded and one can give evidence of the contract*

65 *and give evidence of that ‘without prejudice’ letter.*”

Halsbury's Laws of England Vol. 17 at paragraph 213 states;

“*The contents of a communication made “without prejudice” are admissible when there has been a binding agreement between the parties arising out of it, or for the purpose of deciding whether such an agreement has been reached and the fact that*

70 *such communications have been made (though not their contents) is admissible to show that negotiations have taken place, but they are otherwise not admissible.*”

In this case, the “Without Prejudice” letter dated 11th/11/2014 that Counsel for the Defendant seeks to rely on as an exhibit did not lead to settlement of the dispute. It is my finding therefore, that it cannot be admitted as evidence in court.

75 I would uphold the objection raised by Counsel for the Plaintiff and decline to admit the document marked ‘***Id. D1***’ as exhibit.

I so order

Dated, signed and delivered by mail at Kampala on this 18th day of January, 2023.

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Esta Nambayo

JUDGE

18th/01/2023.