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The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Application No. 0058 of 2023

*(Arising from Miscellaneous Application No. 0026 of 2023)*

*(All arising from Civil Suit No. 0002 of 2021)*

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Arab Contractors ===== Applicant

Versus

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Otai John Michael ===== Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

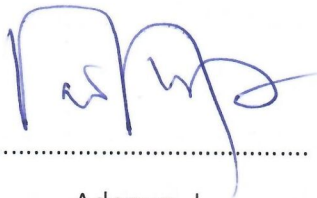
Ruling

20 This is an application by way of Notice of motion brought under section 98  
of the Civil Procedure Act and Order 52 rules 1,2&3 of the Civil Procedure  
Rules for orders that the order dismissing Miscellaneous Application No.  
0026 of 2023 seeking to set aside the order issued on the 21<sup>st</sup> day of  
January 2023 allowing the respondent to proceed ex-parte be set aside and  
Civil Suit No. 0002 of 2021 proceeds inter parte and costs of this application  
25 be provided for.

The grounds of the application are contained in the application and  
affidavit in support, the respondent filed his affidavit in reply.

The applicant was represented by M/s Okiror, Ourum & Co. Advocates  
while the respondent was represented by M/s Latigo & Co. Advocates who  
30 proceeded by way of written submissions.

- 5 This application is essentially concerned with the proceeding of CS 0002/2021 ex-parte as ordered by this court on the 21<sup>st</sup> day of January 2023. On the 13/04/2023 counsel for the plaintiff Ms. Alice Latigo in the absence of the defendants and their counsel prayed that the suit proceeds *ex parte* and be set for formal proof.
- 10 Court noted that on 14/03/2023 counsel for the defendants and the defendants were present in court when the date was set for scheduling, given that no reason for their absence was given court agreed that the matter should proceed for formal proof after an interlocutory judgement had been entered.
- 15 The 13/07/2023 was agreed on as the date for formal proof, however, on this date neither the plaintiff nor counsel entered appearance. On 13/04/2023 the plaintiff and counsel who had fixed the matter for formal proof on 13/07/2023 did not turn up and no reason was given. Court found that the absence of the plaintiff and counsel signified their loss
- 20 of interest in proceeding or that the plaintiff had no evidence to adduce and as such the matter was accordingly dismissed due to non-prosecution with no order as to costs.
- This being the case this application has been taken over by events and as such is of no consequence.
- 25 This application is accordingly dismissed with no order as to costs.
- I so order.



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Adonyo, J

22<sup>nd</sup> August 2023