

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
MISC. APPLICATION NO. 1247 OF 2014  
(ARISING FROM HCT- CIVIL SUIT NO.108 OF 2014)**

**RAMRAJ LIMITED ..... APPLICANT/PLAINTIFF  
VERSUS  
KABUGO STEPHEN ..... RESPONDENT/DEFENDANT**

**RULING**

**BEFORE LADY JUSTICE EVA K. LUSWATA**

This application is presented by motion under Section 0.17 Rule 5 CPR.052 R.1, and 98 CPA, seeking an order for the dismissal of HCCS No.108 of 2014 (therinafter called the head suit) for want of prosecution and costs to be provided for. The application is supported by the affidavit of Dharram Datta, a director of the applicant. There was no response to the application.

In his affidavit, Mr. Datta states that the applicant was notified of the head suit on 24/3/14, and filed their written statement of defence on 4/4/14 and since then, the plaintiff has failed to prosecute the suit.

On 3/12/14, I allowed exparte proceedings after I was satisfied that the respondent was effectively servbed with the motion through M/s Law Associates Advocates, his legal representatives. Counsel for the applicant submitted written submissions on which basis I make my findings.

The Civil Procedure Rules provide for dismissal of suits under certain circumstances. In particular according to 0.17 Rule 5.

*If the plaintiff does not within eight weeks from the delivery of any defence, or whether a counterclaim is pleaded, then within ten weeks from the delivery of the counterclaim, 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 the hearing of the application, the court may order the suit to be dismissed accordingly, or may make such other order, and on such terms, as to the court may seem just.*

I have confirmed from the record of the head suit was filed on 7/3/14 and the applicant followed suit with their defence on 4/4/14. The only action taken by the respondent in the head suit since then was a letter dated 10/4/14 in which his counsel sought an order from the Registrar to set down the suit for hearing under Order 9 rule 10 CPR. It appears that request was never followed up.

In his affidavit, Mr. Datta claims that the applicant is the registered proprietor and the one in possession of land comprised in Block 254 Plot 761 at Kansanga-Nabutiti which is in issue in the head suit. That the respondent has repeatedly harassed the applicant and interfered with their quiet enjoyment of the suit land. In his view, the head suit is frivolous and vexatious and a waste of court's time and resources and that the respondent lacks the resources to meet the costs in the event that he loses the head suit.

I am at this point in the proceedings not at liberty to evaluate and make conclusions on the merits of the claim in the head suit. What is clear though, is that, a period of over one year has elapsed since any action was taken by the respondent in attempting to fix this suit for hearing. I therefore would agree with the findings of the courts in **Daudi Kibirige Vs Samuel N. Nkalubo Civil suit No.438/70** and **Rose N. Musoke Vs Kirovesi Musoke (1998-90) HCB** and the applicant on his counsel's submissions that, there has been inordinate and inexcusable delay by the respondent in fixing the head suit for hearing. The applicant did not bother to respond to this application and it is judged that they conceded to its contents. His failure to take a necessary step in the suit, or to defend this application is a clear indication of his lack of interest in its prosecution.

I therefore allow the application and move to dismiss the head suit under Order 17 Rule 15 CPR.  
The applicant is awarded costs of this application and those of the head suit.

I so order.

**EVA K. LUSWATA**

**JUDGE**

**12/5/2015**