

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 436 OF 2018

5

VOLCANO LIMITED.....PLAINTIFF

VERSUS

10 **BOARD OF GOVERNORS OLD KAMPALA SECONDARY SCHOOL.....DEFENDANT**

RULING:

Before: Lady Justice Alexandra Nkonge Rugadya

Introduction:

15 The plaintiff company *Volcano Ltd* filed this suit initially in the Commercial Division: **Civil Suit No. 424 of 2018**, seeking among others, a declaration that the defendant breached the tenancy agreement between them; and an order for special damages of **Ugx 252,693,500/=**; general damages for breach of tenancy agreement; and interest at a commercial rate of 25%.

20 On 8th June, 2018, the matter was referred to the Land division and a file opened under **Civil Suit No. 436 of 2018**. The defendant filed a WSD and counterclaim on 6th July, 2018. The rejoinder was made on 31st July, 2018.

At the next hearing dated 17th January, 2020, court directed that the JSM and Joint trial bundle be filed on 9th March, 2020. The record indicates that on 24th February, 2020, the JSM was filed in court. The plaintiff trial bundle was filed on 9th March, 2020 and the defendant's trial bundle on 5th March, 2020.

25 On 17th February, 2022 in the presence of both counsel, court made further directions for the parties to file to file witness statements by 1st May, 2022 and today's date was appointed as date for the full trial.

The plaintiff company and its counsel however not only failed to show up or offer any explanation as to why did not turn up in court, they also did not comply with the order to file witness statements. The failure to proceed today is attributed to the plaintiff's failure to comply with the directives given by court and turn up in court for today's hearing.

30 **Order 9 rule 22 of the CPR provides:**



Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed unless the defendant admits the claim or part of it in which case the court shall pass a decree against the defendant upon such admission.....

5 The defendant in this case indeed admitted that an agreement had been reached between the two parties, but denied liability of the amount spent /incurred on renovation and construction on the suit land as claimed by the plaintiff company.

They admitted in the counterclaim that the tenancy was executed but that it followed invited bids for hiring property comprised in **LRV 146 Folio 12 plot 19 Namirembe Road** but that when they were awarded the bill the plaintiffs acted fraudulently when they submitted invalid Tax Clearance Certificate.

Furthermore, that the works they carried out were in contravention with the laws and orders of KCCA. The defendants also admitted that they refunded to the plaintiff a sum of **Ugx 240,000,000/=**.

The above **order 9 rule 22 of the CPR** therefore as cited applies to the extent that the plaintiff failed to appear when the suit was next called for hearing and that the admission for the refund has already been executed. The rest of the issues raised by the defendant are to be addressed under the counterclaim.

In light of the above findings:

1) ***The main suit No. 436 of 2018 is therefore dismissed for want of prosecution. The court will accordingly proceed with the counter claim.***

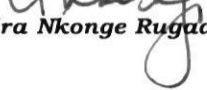
20 2) ***All witness statements to be served and filed in court by 14th July, 2022.***

3) ***In the event however that the counter defendant does not turn up with its witnesses and upon sufficient proof of service of the witness statements to the counter defendant, this court shall make an order to proceed exparte, in respect of matters raised in the counterclaim.***

4) ***In the event of the counterclaimant's failure to turn up with its witnesses on the day fixed for hearing, the counterclaim shall also be dismissed.***

30 5) ***Hearing date for the counterclaim: 10th November, 2022 at 9.30 am.***

6) ***Costs of the dismissed suit shall await the outcome of the counterclaim.***

35 
Alexandra Nkonge Rugadya
Judge

Delivered by email
Alexandra Nkonge Rugadya
6/6/2022

6th June, 2022