

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 680 OF 1991

PLES QUALITY PRINTERS LIMITED ::::::::::::::; PLAINTIFF/ APPLICANT

VERSUS

UGANDA COMMERCIAL BANK ::::::::::::::: DEFENDANT/ RESPONDENT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING

The hearing of this case started on 20/4/95. In the middle of the evidence of the 1st witness for the Plaintiff, Prof. Sempebwa who was conducting the prosecution of the case for the Plaintiff sought adjournment on the personal ground that he had received a that his close relative had been arrested. Secondly he also wanted time to find a document (letter which in the course of the evidence transpired was important) I obliged that request and by consent of counsels from all the parties the case was adjourned for further hearing on 29-30/5/95.

On 29-5-95 when the case was called for resumption of the hearing, Prof. Sempebwa did not appear but the Plaintiff's M/D appeared. Mr. Serwanga informed court that he was instructed to hold the brief for Pr Sempebwa who he said had informed him at short notice to have had stomach problem and was unable to attend court, so Serwanga applied for adjournment.

The application for adjournment was opposed by counsels for the 1st and 2nd Defendants. They thought that Mr. Serwanga being from the same Firm of advocates as Sempebwa could continue with the prosecution of the case. I shared that view and in order to avoid the delay of the case, allowed the application for adjournment on condition that Mr. Serwanga studied the relevant file and to take over the prosecution of the case today.

But today when the file was called for resumption of the hearing, I was surprised when Mr. Serwanga again applied for adjournment of the case, He gave two reasons:-

(1) Sickness of Prof. Sempebwa who was thereby unable to attend Court.

In support, Serwanga referred to an affidavit sworn by Prof. Sempebwa on 29/5/95 stating that he had personal conduct of this case and that he was truly sick with an acute stomach problem. He attached to the affidavit a Note from "Bureka Medical Services" dated 29/5/95. The note tended to confirm that Prof. Sempebwa had been having the stomach problem as from 25/5/95 and that he had been treated but recommended bed rest to facilitate recovery.

The second ground advanced by Serwanga was the inadequacy of time within which he could study the file and to be able to prosecute the case, According to him, his client had advised him that the case was very technical and that he would need more time to study the file to understand the case Mr. Serwanga threatened that if he was not granted the adjournment sought, he would walk out and would leave his client to conduct the case in the manner he chose. So he reiterated his request for adjournment.

The application for adjournment was opposed by counsels for both defendants. Dr. Byamugisha who represented the 2nd Defendant contended that there was no sufficient ground shown by Mr. Serwanga to justify the adjournment,

O. 15 R. 1 of the **CPR** gives to court discretion in granting adjournment. such discretion is exercised in favour of the applicant only where he has shown sufficient cause.

In the instant case, the affidavit of Prof. Sempebwa indicated that he was sick. This was supported by a Note from Bureka Medical services. The Note was dated 29/5/95. According to that note Prof. Sempebwa had been having stomach problems as from 25/5/95. I do not believe in the truth of those documents, they struck me as merely ploys aimed at deceiving court and to perpetrate the delay in disposing of this case. If Prof. Sempebwa had been sick as from 25/5/95 as he and his associate would like me to believe, why did he not notify another counsel from their Firm earlier to take over the handling of the case why did he have to wait until 29/5/95 when to his knowledge, the case was due for hearing. Even the affidavit and the Note were drawn

after Serwanga was ordered to study the file and take over its prosecution. I therefore reject this ground.

As for Mr. Serwanga's claim that he did not have enough time to study the file to be able to take over its prosecution because his client advised him that the case was very technical, I am not of the view that that was no sufficient reason because the case had been adjourned yesterday at 9.10 a.m. He had the whole of the day to study the case. In any case the fault was mainly with them to wait until the hearing day. He had the whole day with the Plaintiff's M/D to receive all the desired instructions to enable him proceed with the prosecution of the case. It is not the client to advise his lawyer o the technicality of a case, I also reject this ground *as* insufficient to justify grant of adjournment.

Mr. Serwanga threatened that if this court did not grant him the adjournment sought, he would walk out of court. That ultimatum was intended to intimidate court. It is unfortunate that a court official like Serwanga should make such unfortunate threat. It is unbecoming of an Advocate to behave like that. It is important that such conduct is brought to the attention of the law council for appropriate action as this is a clear case of discipline. Courts do not operate under threats like that. Nonetheless I refused to succumb to that threat.

Considering all the circumstances of the case, I find that no sufficient cause was shown to justify grant of the adjournment sought. This is an old case and the hearing has dragged on for a long time. I do not think that it serves any of the parties any good to delay it any further. At least I would not like to be seen to be perpetrating the delay. The application is therefore rejected and hearing is ordered to proceed.

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G.M.OKELLO
JUDGE
30/1/95