THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC APPLICATION NO. 253 OF 2013

1. VOICE OF KIGEZI

2. PATRICK BESIGYE KEIHWA :::::::::::::::::::::::::: APPLICANTS

VERSUS

KWIZERA EDDIE :: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

The applicants brought this Notice of motion under O. 17 rr 2 & 6 of the Civil Procedure Rules for orders that:-

(1) Civil suit 827 of 2005 against the applicants be dismissed for want of prosecution

(2) Costs be provided for

The grounds for the application are that:-

(a) The suit against the applicants was last heard on 14th April 2010.

(b) Three years on, the respondent has not taken steps to prosecute it.

(c) If this application is not granted the applicants will continue to carry the burden of having a law suit hanging over his head indefinitely.

(d) It is in the interest of justice that this application be allowed.

According to the affidavit in support by Patrick Besigye Keihwa, he depones that Civil Suit 827 of 2005 was instituted on 27.10.2005. It was cause-listed for hearing on 25th June 2009 and on that day, the suit was dismissed because neither parties were present. The dismissal order was however set aside and a new hearing date was set for 14th April, 2010. Hearing did not take place because learned counsel for the plaintiff was out of the country. Another hearing date was fixed for 14th November 2010. That is now three years but counsel for the plaintiff have sat back yet the defendant continues to carry the burden of having a law suit hanging over its head indefinitely.

In his affidavit in reply, the respondent depones that the applicants made it difficult for them to file scheduling notes and/or to attend court. That the times referred to by the applicants, the applicants' advocates were also not in court. Further that there have been attempts to settle the matter amicably with the 1st applicant and that is why the case was not fixed for hearing. That this application is brought in bad faith and if settlement is not available the suit be fixed for hearing.

At the hearing of this application, Mr. Lomo Zacharia represented the applicant while Mr. Komakech represented the respondent.

In his submissions, learned counsel for the applicants reiterated the contents of the application. He urged court to dismiss the main suit under O. 7 r 6(1) of the Civil Procedure Rules. He referred to the case of **Kampala International University Ltd Vs Tororo Cement Ltd, URA & Attorney General HCCS 433 of 2006.**

In his submissions, Mr. Komakech for the respondent also reiterated the contents of the affidavit in reply. He submitted that the main suit was not fixed because there were attempts to settle the suit. That dismissal of the suit is not mandatory.

In rejoinder, Mr. Lomo denied having any instructions from the applicant to have the suit settled.

I have considered this application as a whole. I have related the same to the submissions by respective counsel. I have addressed myself to the facts of this head suit. It is a defamation suit whose cause of action arose on 5th October 2005 almost eight years ago. It is a case of slander in which the respondent alleged that the words uttered against him brought him into public scandal, odium, contempt and subjected him to inconvenience, stress, anxiety and mental anguish. By the nature of these circumstances, the applicant was expected to have expeditiously moved court to adjudicate over the matter before his feelings evaporated. He did not do this. This suit was once dismissed for absence of the parties. It was re-instated. Although learned counsel for the respondent contends that there was an attempt to settle the suit which led to delay in fixing the suit for hearing, the record does not show that there has been any attempt to settle this suit. The promised joint scheduling memorandum has never been filed, nor has a report of failure to generate one been reported to court.

On 14th April 2010 the suit was fixed for hearing on 14.11.2010 but the record has no indication that anything took place that day. This means the case was last in court on 14th April, 2010. The respondents have been awakened by this application to claim that there have been all attempts to settle this matter, which is denied by the applicants, and are seeking to have the main suit fixed for hearing. This appears an afterthought.

In the circumstances, I am inclined to agree with the submissions by learned counsel for the applicants that by abandoning their case for over three years, the respondent has not been serious with the prosecution of this case. They have not bothered to find out the status of their case nor do they have sound reasons why they have taken no steps within three years to have the suit fixed for hearing.

Order 17 r 6(1) of the Civil Procedure Rules provides that:-

> "***In any case, not otherwise provided for in which no application is made or steps taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed."***
>
> *and;*

O. 17 r 6(2) of the Civil Procedure Rules provides that :-

> ***"In such case the plaintiff may subject to the law of limitation, bring a fresh suit."***

I will find that no sufficient cause has been shown why no application or steps have been taken within two years with a view to proceeding with the main suit and I accordingly dismiss Civil Suit No. 827 of 2005 for want of prosecution and with costs.

Stephen Musota

J U D G E

30.09.2013