IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J., ODOKI, J.S.C., PLATT, J.S.C.)

CIVIL APPEAL NO. 14 OF 1993

BETWEEN

NITIN JAYANT MADHVANI : :: APPELLANT

AND

1. EAST AFRICA HOLDINGS LTD

2. EMCO LIMITED

3. PRATAPBHAI M. MADHVANI

4. MANUBHAI M. MADHVANI ::RESPONDENTS

5. MAYUR M. MADHVANI

6. SURENDRA N. MADHVANI

(Appeal from the ruling of the
High Court of Uganda at Kampala
(Mrs. C.K. Byamugisha) dated the
16th day of June, 1992 in Civil
Suit No, 1181 of 1988).

JUDGMENT OF THE COURT.

This is an appeal against the decision of a trial Judge in the High Court, disallowing an adjournment and dismissing the suit.

We agree with both Counsel that this was a matter within the Judge's discretion. As such this Court would be slow to interfere unless the discretion was not exercised judicially. (MAXWELL v. KEEN (1928) 1KB 645, at p. 653 from AJKIN LJ.).

The salient facts were that on the date set down for hearing Counsel for the Plaintiff informed the

Court that due to fundamental disagreements with the Plaintiff, Counsel would be obliged to withdraw. The Plaintiff then said:

“These developments occurred very late last night; I seek Court’s indulgence to seek the services of another counsel. It is a complicated case which has a multitude of legal issues.”

The defendants objected that is was an old case. It was poor argument. The plaintiff’s case was not complicated. All the defendants were there and some had traveled from London and New York. There would be great expense. Counsel ended by praying that the adjournment should be refused and the case ordered to proceed or be dismissed with costs.

The learned judge did not heed that prayer. The judge refused that adjournment and forthwith dismissed the case. That has aggrieved the plaintiff had he has appealed.

It is clear that the main ground of appeal has been made out. The plaintiff ought to have been asked to proceed with the case if the adjournment was refused. It is being said that since the case was complicated, as the plaintiff, then it must be implied that he could not proceed. No such implication can be drawn. The plaintiff has the right to reply to the facts and states how he would proceed. In fact a short adjournment within a week could not have prejudiced the defendants on payment of all the costs.

It is then said that the Plaintiff’s conduct debarred him from the Courts indulgence. The learned Judge dwelt on the absence of Prof. Sempebwa and it does appear from the record that the Plaintiff had wanted the Professor to appear for him. But the Professor never appeared. There were some interlocutory matters between 1988 and 1992. A perusal of the record does not show that all the blame fell upon the Plaintiff. The Defendants took proceedings for further and better particulars at the last moment in November, 1991 after the date for hearing had been fixed in January, 1992. These proceedings were completed in May 1992. The hearing was set down for June 1992. No point can be taken against the Plaintiff in particular from the proceedings.

Finally, it is said that the agreements upon which the suit was based, came to an end in September 1992. But although not all the remedies prayed for are open to the Plaintiff, others

may still be pursued.

In the end, it is clear that the plaintiff was shut out from the judgment seat, without proper considerations. The discretion was not exercised judicially. The appeal will, therefore, be allowed, the judgment and orders of the High Court set aside, and the case re-instated for hearing before another Judge of the High Court. The costs of this appeal will be awarded to the Plaintiff and the costs of the proceedings in the High Court so far, will abide by the results of the suit.

Delivered in this Court this 10th day of December, 1993 at Mengo

S.T. MANYINDO
DEPUTY CHIEF JUSTICE

J.B. ODOKI
JUSTICE OF THE SUPREME COURT

H.G. PLATT
JUSTICE OF THE SUPREME COURT