

UGANDA / JUDGMENT

**ABC Impex Africa (U) Ltd v Haruna
Enterprises (Civil Suit No. 899 of 2017)
[2021] UGCommC 110 (10 February 2021)
[2021] UGCommC 110**

COURT
Commercial Court of Uganda

BEFORE
Gaswaga, J

CASE / FILE NUMBER
Civil Suit No. 899 of 2017

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**THE REPUBLIC OF UGANDA THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT] CIVIL SUIT NO. 899 OF 2017**

ABC IMPEX AFRICA (U) LTD ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

SSENTONGO HARUNA

T/A HARUNA ENTERPRISES ::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

BEFORE: HON. JUSTICE DUNCAN GASWAGA

- [1] This is ruling on an application brought under Order 17 rule 4 for orders that the court proceeds to decide the case under the said order instead of Order 09 rule 20 CPR.
- [2] The grounds of this application were raised by Counsel Richard Etanyo who stated that the matter ought to have been heard under Order 17 rule 4 considering that the defendant had not filed a written statement of defence as had been ordered by this court. Counsel concluded that the court, while exercising its powers under Section 98 of the CPA substitutes the order previously made by this court under Order 9 with Order 17 rule 4 CPR and proceed to decide the case as directed by the rule. Counsel further prayed that the Court be pleased to grant the remedies prayed for in the plaint.

- [3] The background of the suit is that the defendant was sued by way of summary suit in Civil Suit No. 899 of 2018. The defendant subsequently applied for leave to appear and defend vide M. A No,46 of 2018 which leave was granted on 21/06/2018. 5He was also ordered to proceed and file a written statement of defence within fifteen days. The due date was 17/10/2018. The defendant did not file the written statement of defence. Counsel then filed M. A No. 364 of 2019 for extension of time to file a defence. This was consented to by both parties and the defence was finally filed on 28/11/2019. At the court hearing on 26/02/2020, the plaintiff prayed to court to have the matter heard ex-parte under Order 9 rule 20 which leave was granted and on the 16/02/2020 the hearing was set for 7/7/2020. Surprisingly on the day for hearing, Counsel for the plaintiff appeared and prayed for substitution of the said order with the procedure under Order 17 rule 4 in effect abandoning the earlier granted order to proceed ex parte.
- [4] This application raises one issue;
- *(i) Whether this suit satisfies conditions to be decided under Order 17 rule 4.*
- [5] Order 17 rule 4 states that;

"where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witness, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately. "

- [6] It ought to be noted that the suit was originally brought under Order 36 by way of summary suit. However, upon the defendant being given leave to appear and defend, the suit became as one under Ordinary plaint. This therefore means that once there is a default on the part of the defendant in filing the written statement of defence, the same ought to proceed ex parte as though the defendant had filed a defence. See **Order 9 rule 10 CPR and Carlton Douglas Kasirye Vs. Sheena Ahumuza Baqiene aka TASHA, HCMA NO, 150 of 2020.**
- [7] In the facts before court however, the defendant applied to court to file a written statement of defence out of time which was allowed. This was filed on 28/11/2019. The defendant subsequently appeared for the scheduling conference and a hearing date was given. This the defendant did not adhere to. As such, the correct prayer to be made by the plaintiff was one for leave to proceed ex parte as counsel for the plaintiff had earlier done. This is the exact situation envisioned by Order 09 rule 20(1)(a). It states that;

"where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, if the court is satisfied that the summons or notice of hearing was duly served, it may proceed ex parte. "

[8] From the above facts and discourse, ^I find that this suit is not one that should be pursued under Order 17 rule 4 but Order 09 rule 20. Therefore, the instant application is dismissed. However, for purposes of clarity, by rejecting the instant application, it means that the status quo i.e. the ex parte order granted on 26/02/2020 for the plaintiff to proceed ex parte, is still maintained.

^I so order

Dated, signed and delivered this 10th day of February 2021

V Duncan Gaswaga

JUDGE

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