

UGANDA / JUDGMENT

Kukua Agriculture Limited v Tejani and Another (Civil Suit 41 of 2019) [2023] UGHCLD 315 (17 October 2023)

[2023] UGHCLD 315

COURT

HC: Land Division (Uganda)

BEFORE

Serunkuma, J

CASE / FILE NUMBER

Civil Suit 41 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT
MASINDI CIVIL SUIT NO. 0041 OF 2019

KUKUA AGRICULTURE LIMITED
PLAINTIFF

VERSUS

10 1. AHMED TEJANI 2. KINYARA SUGAR
LTD DEFENDANTS

BEFORE: Hon. Justice Isah Serunkuma.

RULING

This ruling is premised on the issue of; Whether the current civil suit should abate for noncompliance of court order to file a joint scheduling memorandum, witness statements and trial bundles and whether the counter claim as raised by the 2nd defendant should be

20 withdrawn.

A summary of this case is that the plaintiff sued the defendants jointly and severally for;

- a) A declaration that the 1st defendant is in breach of the rental agreement dated 1st December 2015.
- b) A declaration that the 2nd defendant's rights over the suit property is subject to the 25 interest of the plaintiff.

- c) A declaration that the plaintiff had a right to purchase the suit property before selling it to the 2nd defendant.
- d) A declaration that the acquisition of the suit property by the 2nd defendant was a breach of the rental agreement which makes the entire transaction void and of no legal effect.

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- e) An order directing the 2nd defendant to renew the rental agreement for another two years of 4 years each.
- f) A permanent injunction
- g) General & aggravated damages
- h) Costs of the suit
- i) Interest on (g) & (h) from the date of filing the suit until payment in full.

Representation & hearing

The plaintiff is represented by Counsel Ssebowa Solomon of M/s Katende Ssempebwa & Co. Advocates. The 1st defendant is represented by Counsel Edson Ruyondo of M/s

10 Ruyondo & Co. Advocates whereas the 2nd defendant is represented by Counsel James Nangwala of M/s Nangwala, Rezida & Co. Advocates.

When the suit first came up for hearing on the 18th day of 2022 before the Assistant Registrar, counsel Ssebowa informed court that mediation had failed and sought for court's directions for which he undertook to serve unto his colleagues. This court then held

15 that;

"Let parties file a joint scheduling memorandum together with their respective written statements and trial bundles within 90 days from today. Hearing before the trial judge is fixed for 15th march 2023 at 11:00am."

At the hearing on the 15th march 2023, counsel Nangwala submitted that the case had been fixed for hearing but no joint scheduling memorandum had been filed although it was supposed to be filed before that day's proceedings. He further submitted that the 2nd defendant had duly filed its witness statements and trial bundle. He also stated that he was aware he would sign a joint scheduling memorandum that morning as had been intimated by counsel for the plaintiff but it was not the case.

Counsel Zemei who held brief for counsel Solomon Ssebowa representing the plaintiff, submitted that the joint scheduling memorandum had been filed that morning though it had not been endorsed by counsel Nangwala. Counsel Zemei submitted that, they had also just been served with a trial bundle for the 2nd defendant as well as witness statements

5 and sought for leave of court to extend time within which the plaintiff shall file their witness statements to enable the expeditious hearing and disposal of this case. She proposed two weeks.

In rejoinder, counsel Nangwala requested to make two applications before this court. With regard to the first application, Counsel Nangwala submitted that the 2nd defendant filed a 10 counter claim for vacant possession to which no reply was filed. He stated that the counterclaim has since then been overtaken by events since the 2nd defendant is in effective possession of the suit land and reaping profits therefrom. Counsel further requested to withdraw the counterclaim under Order 25 rule 1 of the Civil Procedure Rules with no order as to costs since there was no reply to the counter claim.

- 15 With reference to the second application, Counsel submitted in respect to the submissions made by counsel Zemei that, the order to file a joint scheduling memorandum, witness statements & trial bundle was made on the 18th day of October 2022. Counsel stated that it is about 6 months since then and besides the documents were supposed to be filed within 90 days. Counsel Nangwala further submitted that initiation of such filings is by the 20 plaintiff counsel and yet for a period of about 6 months, there had been non-compliance
- of that schedule. Counsel added that Order 17 rule 4 of the Civil Procedure Rules, the court is obliged to proceed with the suit in the manner deemed expedient.

Counsel stated that there has been a lot of backlog in these courts and such conduct of counsel for the plaintiff was one root cause of backlog. Counsel submitted that no medical

25 evidence had been furnished of the alleged indisposition for 6 months and there was no evidence that within 14 days that the witnesses who had been sick for 6 months would

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now be able to make their statements. Counsel prayed that the matter be dismissed and that should the plaintiff need to have the case he could file another subject to the law of limitation.

In response to the rejoinder, counsel Zemei, reiterated her earlier prayers. Counsel 5 submitted that the application for dismissing this case was premature. Counsel added that a dismissal at this time of the case would not have addressed the points in the suit and joint scheduling memorandum. Counsel submitted that the term "may" as used in Order 17 rule 4 of the Civil Procedure Rules is not mandatory. Counsel prayed that in determining the matter of the counter claim, court grants leave to make a response to the 10 counterclaim.

Court analysis

Having considered the oral submissions of both counsel, it is for this court to consider the issues as raised hereinabove. For purposes of this decision, I will reproduce the main issue stating;

15 *1. Whether the current Civil suit should abate for non-compliance of court orders/directions to file a joint scheduling memorandum, witness statements and trial bundles.*

Order 18 rule 5A specifically sub rules 1, 6 & 7 of the Civil procedure (Amendment) Rules 2019 provides for witness statements, the timelines within which they should be filed and 20 the effect of non-filing as hereunder;

"5A. Witness statement.

(1)The evidence of a witness shall consist of a witness statement which shall be filed after the scheduling conference on the direction of the trial judge and served upon the opposite party.

(2)

(6) The witness statement shall be filed on the date fixed by the trial Judge.

(7) A witness who has not filed a witness statement shall not be heard except with leave of court".

5 In addition to the above, Order XIA rule 7(2) of the Civil procedure (Amendment) rules 2019 provides;

(2) The parties shall, after compliance with directions in the summons, and where the matter has not been referred for alternative dispute resolution or referred to another court, produce a trial bundle for purposes of a scheduling conference before 10 *the trial judge in accordance with the Guidelines for Scheduling Conference prescribed in Part IV of the Schedule to these Rules".*

The objective of the above provisions is to manage a case. In *London Borough of Red bridge - and- A -and- B -and- E (By her Children's Guardian) [2016] EWHC 2627*, case management was considered that; *"Case management directions are not mere administrative pedantry.*

- 15 *The seemingly mundane nature of case management directions belies the fact that they are crucial to the fair administration of justice in a jurisdiction that has available to it arguably the most draconian power available to a court,".* This helps in curbing the long standing issue of back log in the court as had been submitted by counsel for the 2nd defendant.
- 20 As already noted hereinabove, this court made directions that the parties file a joint scheduling memorandum together with their respective witness statements and trial bundles within 90 days from the 18/10/2022. The said orders were made in the presence of Counsel Ssebowo who appeared on behalf of the plaintiffs and in the absence of other counsel and their parties as well. The 90 days with effect from the 18/10/2022, expired on
- the 23rd 25 day of February 2023. Until 23/02/2023, neither of the parties had enforced the

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orders/ directions made by this court by filing their joint scheduling memorandum or witness statements or trial bundles.

Counsel Nangwala who claims to have filed the 2nd defendant's requisite documents and being the same advocate who prays to this court that the civil suit abates or is dismissed,

- filed the 2nd defendant's witness statements on the 15th 5 day of March 2023. I believe counsel is aware of the Equity maxim of, *"He who comes to equity must do equity."* He himself filed his documents out of time without seeking for more time within which to properly file his documents and yet seeks that the plaintiffs be punished. Perhaps counsel for the 2nd defendant should have thought about it before trying to throw the plaintiff and
- 10 its counsel under the bus.

Despite the above, counsel Nangwala prayed to this court that the civil suit abates or is dismissed for non-enforcement of court orders. The law provisions stated herein are clear that where witness statements are not filed, a witness shall not be heard save with leave of court and I believe the same effect is transferred to non-filing of the joint scheduling memorandum and the trial bundle. Counsel for the 2nd 15 defendant also relied on Order 17 rule 4 of the Civil Procedure Rules in his submissions which states that;

"4. Court may proceed notwithstanding either party fails to produce evidence.*

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 witnesses, or to perform any other* 20 *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".

In other words, this court has the discretion to proceed with this civil suit as it is despite the actions of all counsel for failing to enforce the court's directions. However, I have also noted that the joint scheduling memorandum was filed on the 15th day of March 2023 25 without leave of this court. Advocates are meant to help this court and not fight against it

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in administering justice. In the result of the above, since neither of the parties has sought for leave of this court to file their respective pleadings out of time, this court shall proceed to entertain the suit in disregard of all the documents filed after 23rd day February 2023.

2. Whether the counter claim as raised by the 2nd defendant should be withdrawn.

- 5 With regard to the counter claim, whereas Counsel Nangwala sought for its withdrawal having been raised by the 2nd defendant whom he is representing, Counsel Zemei on behalf of the plaintiff prayed for more time within which to file a reply in court. Order 8 rule 11 of the Civil Procedure Rules provides for the timelines when a reply to a counterclaim should be filed and served unto the opposite party. It provides that;
- 10 *11. Reply to counterclaim.*

(1) Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him or her of the counterclaim.

(2) Where a reply to the counterclaim is filed under sub rule (1) of this rule, the 15 *plaintiff shall serve it upon the defendant within fifteen days after its filing.*

> *(3) No other reply or rejoinder shall, subsequent to sub rule (1) of this rule, be filed without leave of court, the application for which must be filed within fifteen days from the date of the last service."*

I need not reiterate the above provisions since they are clear enough for counsel for the 20 plaintiffs to grasp the literal meaning. It is my opinion that Counsel for the plaintiff is about six (6) months late to seek this court for more time within which to file a reply to a counter claim without any substantial reason.

Counsel Ssebowwa himself is the one who upon appearing in court on the 18th/ 10 /2022 in absence of others sought for directions from this court on how to proceed with the matter

since mediation of the matter had failed. The directions were granted as already noted above by the Assistant Registrar then. That sloppiness of counsel for the plaintiff shall not be tolerated by this court. In the premises, leave to file a reply to the counterclaim is hereby denied and as such, the counterclaim is hereby withdrawn under Order 25 rule 1 sub rule

5 2 of the Civil Procedure Rules with no order as to costs of the same.

The application by Counsel Nangwala that this Civil Suit abates or is dismissed by this court is hereby denied.

I so rule.

10 Dated and delivered on this 17th day of October 2023.

..... Isah Serunkuma

15 JUDGE

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