

J.B. MAINA & COMPANY
LIMITED.....PLAINTIFF

VERSUS

1. FARID M. AL-MAARY

2. WYCLIFFE

MAKASEMBO.....DEFENDANTS

Coram:

Mwera J.

Onjoro for Plaintiff

Umara for 1st Defendant

N/A for 2nd Defendant

Court Clerk Furaha

RULING

The 1st defendant sought orders to have this suit dismissed for want of prosecution invoking the powers donated by Order 17 rule 2 of Civil Procedure Rules and sections 1A, 1B, 3A Civil Procedure Act.

The reason given for that prayer was that since 13th May, 2009 when a preliminary objection raised against the chamber summons dated 4th February, 2009 was upheld, the plaintiff company had taken no step to set down the suit for trial. Thus the plaintiff had no interest to do so and so it should be dismissed. A short supporting affidavit by Mr. Munyithya, advocate for the applicant, added that correspondence exchanged regarding fixing this suit for trial, elicited no positive movement on the part of the plaintiff – hence this application.

In the replying affidavit of Mr. Segal, advocate for the plaintiff, it was claimed that there was a practice in the registry where firms of advocates were only allowed each to fix a given number of cases over a given period. So on his part, their firm was inclined to fix for hearing cases older than the present one. So with that state of things, it would be unjust to dismiss this case. It was not a wilful act on the part of the plaintiff that the case was not fixed for hearing. The 1st defendant had not been prejudiced and so the prayer may as well be dismissed.

Directed to submit only the plaintiff did so by the assigned date.

In this court's consideration of the whole matter it appears just and fair that the order sought should not issue. It is not lost on litigants in this court that their lawyers' firms were subject to a practice direction, even if a written one was not readily available, that each was given a quota of cases to fix for hearing over any given period, perhaps monthly. That has now been reversed by the Practice Note No. 1 of 2012 dated 2nd February, 2012 in that with the Divisions and increased number of judges that practice would cease and whoever complied with Order 11 Civil Procedure Rules would go for hearing dates in the registry. That being the case, the prayer herein is refused. The parties have thirty (30) days to exchange witness statements, bundles of paginated documents plus sets of issues, ready to obtain directions as to the dates of trial. Costs in the cause.

Delivered on 29th August, 2012

J. W. MWERA

JUDGE