

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2011/HP/755

BETWEEN:

MBAMUS INVESTMENT LIMITED

AND

NEBIOUS TRADING COMPANY LIMITED



PLAINTIFFS

DEFENDANTS

BEFORE : HON. G.C. CHAWATAMA

For the Plaintiffs : N/A- J.C. Mulunga & Co.

For the Defendants : Mr. Chipanzya- Inambao, Chipanzya & Co.

RULING

This is an application in which the Defendant seeks dismissal of the action for want of prosecution.

This is a matter in which the Plaintiff was claiming the following from the Defendant:

- 1. Refund of the sum of US\$12,000 balance of the rentals paid in advance for six months from June to November, 2011.*
- 2. Damages to property worth a total sum of seventy-four million five hundred thousand, (K74,500,000.00) unrebased.*
- 3. Loss of business in the sum of K2,500,000.00 per day from the 28th July, 2011 to the date of the determination of this action.*

3. *Loss of business in the sum of K2,500,000.00 per day from the 28th July, 2011 to the date of the determination of this action.*
4. *Recovery of the following assets:
2 Cold rooms of writ, 1 Butcher boy, 1 Mince meat machine, 1 ice-cube making machine, 1 sausage filler machine.*
5. *Interest on (i) and (iii) above at the prevailing Bank of Zambia lending rate from the date of writ till and final payment.*
6. *Costs of and incidental to this action.*
7. *Any other relief the Court may deem fit.*

The Plaintiff obtained judgment in default but the same was later set aside and the Defendant entered its defence on 8th May, 2014.

This matter came before me on the 30th June, 2015 and 22nd July, 2015; on both days the Defendant did not attend court.

I sent this matter for mediation and the mediation report shows that the Plaintiff and his advocate did not appear for two consecutive hearings. The mediator reports that he was informed that the Plaintiff resides in Belgium.

When this matter came up for hearing the application, Mr. Chipanzya, Counsel for the Defendant relied on the affidavit filed

on the 16th December, 2015 in support of the application, particularly paragraphs 3, 4 & 5.

Counsel submitted that there was an apparent lack of interest on the part of the Plaintiff to prosecute the matter. Counsel further submitted that from 8th August, 2011 no tangible steps have been taken by the Plaintiff; on the 3rd and 10th December when the matter came up for mediation the Plaintiff did not attend nor were any reasons or excuses given for the absence. Counsel prayed that in the premise the matter be dismissed with costs to be borne by the Plaintiffs.

A perusal of the file reveals the position as stated by Counsel for the Defendant. I can confirm that the Plaintiff has never appeared before me.

I dismiss this matter for want of prosecution with costs to the Defendant.

Leave to appeal is granted.

DELIVERED AT LUSAKA ON THIS 10TH DAY OF MAY, 2016.


G.C.M CHAWATAMA
JUDGE