THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA
CIVIL SUIT NO. 005 OF 2024

1. KAUDE SIMON
2. OKIRIA ONESMAS **:::::::::::::: PLAINTIFFS**
3. MUZEI SHABAN

VERSUS

THE ARAB CONTRACTORS **:::::::::::::: DEFENDANT**
(OSMAN AHMED OSMAN & CO.)

BEFORE: H/W KYEMBE KARIM, MAGISTRATE

RULING

Background

1. The plaintiffs sued the defendant seeking, among other reliefs, a declaration that the defendant is in breach of contract and an order for specific performance. The plaintiffs have closed their case, and the suit was fixed for the hearing of the defence case.

2. When the suit was called today, the 5th day of October 2026, the plaintiffs were present and represented by Counsel Wekesa Prossy. Neither a representative of the defendant nor its counsel, Mr. Menya Paul of Menya & Co. Advocates, was in attendance, and no communication had been received from either of them explaining the absence.

The application

3. Counsel for the plaintiffs submitted that the defendant's representatives have not appeared in court at any stage of the trial; that at the last sitting counsel for the defendant merely wrote to court stating he could not attend; that the suit has been adjourned on several occasions on account of the defendant's non-appearance; and that the defendant and its lawyers are not interested in having their side heard. He prayed that the plaintiffs be permitted to proceed ex parte, that the court visits

the locus in quo, and that judgment be entered. In the alternative, he prayed for costs of the adjournment of UGX 300,000 for counsel's and the plaintiffs' transport, noting that costs awarded on previous adjournments remain unpaid by the defendant.

The law

4. Order 17 rule 4 of the **Civil Procedure Rules, S.I. 71-1** provides:

> *"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 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 forthwith."*

5. Order 17 rule 2 further empowers the court, where on any day to which the hearing is adjourned a party fails to appear, to dispose of the suit in one of the modes directed by Order 9, or to make such other order as it thinks fit. Under Order 9 rule 20(1)(a), where the plaintiff appears and the defendant does not, and it is shown that the defendant was duly notified of the hearing, the court may proceed ex parte.

6. These rules give effect to Article 126(2)(b) of the **Constitution of the Republic of Uganda, 1995**, which commands that justice shall not be delayed. The right to a fair hearing under Article 28(1) guarantees a party the opportunity to be heard. It does not entitle a party who declines that opportunity to keep a suit pending indefinitely at the expense of the opposite party.

Determination

7. The record shows that this suit has been before this court on more than twenty occasions since July 2024. The plaintiffs closed their case and the suit was adjourned to 20th August 2026 for the defence.

8. On 19th August 2026 the court received a letter from Menya & Co. Advocates seeking leave of absence on the ground that counsel had a matter fixed for hearing before the High Court at Moroto on the same date, and proposing 18th September 2026 as the next date. The letter was copied to counsel for the plaintiffs but not served on him, with the result that the plaintiffs and their counsel attended court on 20th August 2026 to find the defence absent. The court nonetheless indulged counsel, adjourned the suit to today for hearing, awarded the plaintiffs costs of the day of UGX 150,000, and directed that it would be the last adjournment in the matter.

9. An advocate who seeks an adjournment by letter, and does not attend court to hear the outcome, is under a duty to find out the date to which the matter has been adjourned, whether from the court registry or from opposing counsel. He cannot ask the court for its indulgence and then plead ignorance of the date the court fixed in granting it. The adjournment of 20th August 2026 was granted at the defendant's own instance, and the defendant is fixed with knowledge of today's date. Despite this, neither the defendant nor its counsel has appeared today, no communication has been made, and the costs previously awarded remain unpaid.

10. I am satisfied that the defendant has been afforded ample opportunity to present its case, including a last adjournment granted at its own request, and has failed to use it. Its conduct is a default of the kind contemplated by Order 17 rule 4. A further adjournment would serve only to prejudice the plaintiffs, who have attended court faithfully and at their own expense for over two years. The defendant cannot be permitted to hold the suit hostage by its absence.

11. On the prayer for a visit to the locus in quo, the purpose of such a visit is to check the evidence already given by the witnesses in court, not to fill

gaps in a party's case: **Kanyabwera v Tumwebaze [2005] 2 EA 86**. Within those limits, the visit is appropriate in this matter and is granted.

12. The principal prayers having been granted, the alternative prayer for costs of the adjournment does not arise.

Orders

13. Accordingly, it is ordered as follows:

    a) The defence case is closed under Order 17 rule 4 of the Civil Procedure Rules, and the suit shall proceed to determination **ex parte.**

    b) The court shall visit the locus in quo on the ___28th___ day of _____OCT_____ 2026, of which notice shall issue to both parties.

    c) Directions as to the written submissions and judgement date shall be furnished after the locus visit.

    d) Costs shall abide the outcome of the suit.

Delivered in open court this 5th day of October 2026.



H/W KYEMBE KARIM
MAGISTRATE