**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL COURT DIVISION)**

**MISC.APPLICATION NO. 458 OF 2012**

**(*Arising from Civil Suit No. 133 of 2010*)**

**KHALIL BAKHRESA::::::::::::::::::::::::APPLICANT/DEFENDANT**

**VERSUS**

**MUHAMMAD MAJJAMBERE:::::::::::::::RESPONDENT/PLAINITFF**

**BEFORE THE HON. LADY JUSTICE HELLEN OBURA**

**RULING**

This is a ruling in an application for orders that Civil Suit No. 133 of 2010 be dismissed with costs. The main ground as stated in the affidavit in reply is that on 6/12/2011this court ordered the respondent to deposit Shs. 25,000,000/= in court as security for costs within one month from the date of that order. That order has not been complied with to date.

When this application came up for hearing on 26th November 2012, Mr. Ernest Rukundo appeared for the respondent but was not robed. Ms. Belinda Nakiganda held brief for him and requested for an adjournment to enable him file an affidavit in reply.

Mr. Maxim Mutabingwa counsel for the applicant opposed the request for adjournment arguing that there was no sufficient cause for allowing the same since the respondent was served with the application on 19th October 2012. This court agreed with him and declined to grant an adjournment. Counsel for the applicant argued the application and as a compromise court allowed counsel for the respondent to file a written reply by 3rd December 2012 and the matter was fixed for a ruling on 17th December 2012. However, as at the time of preparing this ruling no reply to the submissions had been filed and as such this application is not opposed.

Counsel for the applicant in his submission relied on Order 26 rule 2(1) of the Civil procedure Rules (CPR) which is to the effect that if the security for costs is not furnished within the time allowed the suit should be dismissed unless the plaintiffs are permitted to withdraw from the suit. He argued that it was almost one year since the order was made and the security which was to be furnished within one month from 30/11/2011 had not been deposited.

He referred to the case of **Amrit Goyal v Harichand Goyal & 3 others C.A No.109 of 2004** where the respondents were ordered to pay further security for costs and they failed to do so. Court held that a court order is a court order and must be obeyed. He prayed that in the circumstances of this case where the respondent has not complied with the court order for over a year now the suit should be dismissed with costs.

Order 26 rule 2(1) of the CPR under which this application was made is very explicit on this matter. It provides that “*if the security for costs is not furnished within the time fixed, the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw from the suit”*

In addition, in the case of **Amrit Goyal v Harichand Goyall &3** **others C.A No 109 of 2004** relied upon by counsel for the applicant it was held that, “*a court order is a court order and must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If court orders were to be ignored with impunity, this would destroy the authority of judicial orders which is the heart of judicial system*s”.

In the instant case it is not in dispute that the respondent has not deposited the money as ordered. Neither has the plaintiff applied to withdraw from the suit. In the circumstances, this court has no option but to comply with the provisions of Order 26 rule (2) (1) of the CPR which is couched in mandatory terms and the above authority which is binding on this court.

In the result, Civil Suit No. 133 of 2010 is dismissed with costs to the applicant/defendant.The respondent/plaintiff shall also pay costs of this application because there was no need to waste court’s time when he actually had no intention of defending it. It would have been prudent for the respondent to just concede so as to save time and avoid costs.

I so order.

Dated this 17th day of December 2012.

Hellen Obura

**JUDGE**

Ruling delivered in chambers at 3.00 pm in the presence of Mr. Max Mutabingwa for the applicant. There was no appearance for the respondent.

**JUDGE**

17/12/2012