

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

EPHRAIM UGWUONYE

Plaintiff,

v.

OLUWOLE ROTIMI, et al.

Defendants.

*
*
*
*
*
*
*
*
*

Civil No. PJM 09-658

MEMORANDUM OPINION

Pro se Plaintiff Ephraim Ugwuonye filed this Complaint on March 13, 2009 against Defendants Oluwole Rotimi, Omoyele Sowore, Domain by Proxy Inc., and Mobolaji Aluko, alleging claims of Defamation, Invasion of Privacy and Negligence. Defendants Aluko and Domain by Proxy, Inc. were voluntarily dismissed from the case.

Plaintiff failed to file any proof of service as to Rotimi within the 120-day period prescribed by Fed. R. Civ. P. 4(m). Thereafter the Court ordered Plaintiff to show good cause as to why the Complaint should not be dismissed without prejudice as to Rotimi pursuant to Fed. R. Civ. P. 4(m). Plaintiff responded to the Show Cause Order, stating that a commercial process server made several unsuccessful attempts to serve Defendant Rotimi and that Rotimi had moved from Maryland to Florida in an attempt to evade service. Plaintiff further stated that he intended to request that the Court reissue a new summons for Rotimi's Florida address.

The Court notes that a commercial process server's failure to execute service does not in itself constitute good cause as to why the complaint should not be dismissed. *See Clark v. E.I. Dupont De Nemours and Company, Inc.*, 86 F.3d 1149 (4th Cir. 1996). Furthermore, even if Plaintiff's claim that Rotimi was attempting to evade service had merit, more than seven months

have passed and Plaintiff has failed to seek a new summons from the Court while Rotimi remains unserved. Plaintiff has at no time undertaken to inform the Court of any ongoing efforts to achieve service. Under these circumstances it cannot be said that Plaintiff has made “reasonable, diligent efforts to effect service on the Defendant.” *T&S Rentals v. United States*, 164 F.R.D. 422, 425 (N.D. W. Va.. 1996). Accordingly, Defendant Rotimi is **DISMISSED** without prejudice for failure to serve. Fed. R. Civ. P. 4(m).

A separate Order will **ISSUE**.

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

April 5, 2010