

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**MISCELLANEOUS APPLICATION NO.103 OF 2023**  
**(ARISING FROM CIVIL SUIT NO.0020 OF 2023)**

**JINJA CITY COUNCIL**

**] APPLICANT**

**VERSUS**

**INFRASTRUCTURE DEVELOPMENT  
AND MANAGEMENT LIMITED**

**] RESPONDENT**

**Before: Hon. Justice Ocaya Thomas O.R**

**RULING**

**Introduction:**

This application was brought by way of a Notice of Motion under Order 36 Rule 3, Order 52 Rule 1 and 3 of the Civil Procedure Rules, SI 71-1 seeking the following orders:

- (1) That the Applicant be granted unconditional leave to appear and defend Civil Suit No. 0020 of 2023.
- (2) Costs of this application be provided in the cause.

The Respondent/Plaintiff commenced Civil Suit No. 0020 of 2023 by way of summary procedure in this court against the Appellant/Defendant for the recovery of UGX 339,500,000 arising from money owed in a contract for consultancy services for supervision of the rehabilitation of road networks.

This Application is supported by the affidavit of Mr. Peter Mawerere, the Deputy Town clerk of Jinja City Council whose grounds briefly state that –

1. That the Applicant was not effectively served with summons in summary suit.



- 5        2. That they are not indebted to the Respondent in the sum of UGX 339,500,000/= as claimed in the suit.
3. That they have a good defense to the suit and a copy of the draft defense is attached.
- 10       4. That it is in the interest of justice and equity that the application for leave to appear and defend is allowed so that the suit is heard and determined on its merits.

**Representation and Submissions:**

15       The Applicant was represented by the Chambers of the Attorney General in Mbale while the Respondent was jointly represented by law firms of Ntende-Owor & Co. Advocates together with BRANMARK Advocates.

The parties with leave of court filed written submissions.

20       **Evidence:**

The Applicant led evidence by way of an affidavit deponed by Peter Mawerere in support of the Notice of Motion. The Respondent equally led evidence by way of an Affidavit in reply deponed by Ronald Menya.

25       Both parties filed submissions which I have considered and suffice to say that I have not seen the need to reiterate the same below.

**Decision:**

30       In the interest of saving time, I shall only address the Respondent's submission given its significance as far as they conceded to the Applicant's prayers for leave to appear and defend the summary suit. The Respondent submitted that the said pleadings (Draft Written Statement of Defense) raise triable issues which can only be conclusively resolved and/or determined in an ordinary suit. In particular regard to the alleged restrictions in the PDDA Act or the validity/interpretation of the addendum to the

35       original contract.



5 In ***Makula Interglobal Trade Agency V Bank of Uganda [1985] HCB 65***, the Court while considering the issue of a plausible defense, held that –

“Before a leave to appear and defend is granted, the defendant must show by affidavit or otherwise that there is a bonafide triable issue of fact or law. When there is a reasonable ground of defense to the claim, the defendant is not entitled to summary judgement. The  
10 defendant is not bound to show a good defense on the merits but should satisfy the court that there was an issue or question in dispute which ought to be tried and the court shall not enter upon the trial of issues disclosed at this stage.”

In line with the foregoing, and the Respondent’s concession submission that there are  
15 triable issues that cannot be adequately scrutinized and resolved under Order 36 and thus in the interest of justice, it is only right that the matter be allowed to go for a full trial where the Defendant/Applicant is allowed to enter defense and have his or her case heard on its merits.

Order 36 Rule 10, It provides that –

20 *Where leave, whether conditional or unconditional, is given to appear and defend, the court shall have power to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or may order the suit to be immediately set down for hearing.*

25 In the premises, the Applicant is granted an unconditional Order to file a defense to the claim. It should be filed within 15 days from the date of this ruling and the Cost shall be in the cause.

**In Conclusion:**

30 On the premises, I make the following orders;

- (a) The Applicant is granted unconditional leave to appear and defend in Civil Suit No. 0020 of 2023, INFRASTRUCTURE DEVELOPMENT AND MANAGEMENT LIMITED V. JINJA CITY COUNCIL.



5 (b) The Applicant shall within 15 days from the date of this Ruling file and serve the Plaintiff/Respondent with the Defense.

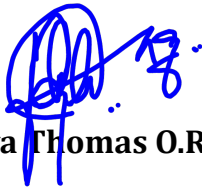
(c) The Respondent will have 15 days to file and serve its reply to the defense, if any.

10 (d) The parties will take the next steps thereafter in accordance with each party's obligations under the Civil Procedure Rules as amended.

(e) The Cost of this Application shall be in the cause.

I so order.

15 Delivered electronically this 13th day of March 2024 and uploaded on ECCMIS.

A handwritten signature in blue ink, appearing to read 'Ocaya Thomas O.R.', with a stylized flourish at the end.

Ocaya Thomas O.R  
20 Judge,

13<sup>th</sup> March, 2024