

THE REPUBLIC OF UGANDA

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

HCT-00-CC-MA-0585-2007
(Arising from HCT-00-CC-CS-0689-2007)

R. L. JAIN PLAINTIFF

VERSUS

KASOZI G. MICHEAL & ANOTHER..... DEFENDANTS

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application brought by Notice of Motion under Order 36 rules 3 and 4 Order 52 rules 1 and 3 of the Civil Procedure Rules for orders that:-

1. The applicant's be granted unconditional leave to appear and defend this suit.
2. Costs of this application be provides for.

The grounds for this application are that:

- (a) The Applicants/Defendants received a loan of Uganda Shs39, 000,000/= from the Respondent/Plaintiff at 15% interest per month for two months.
- (b) The 1st Applicant pledged his Certificate of Title to land comprised in Buddu Block 101 Plot 24 at Kasambya Masaka as security for the loan.
- (c) It was expressly agreed by both parties that should the said loan not be paid within two months, the Respondent would go a head and sell the security without recourse to Courts of law.
- (d) The applicants are surprised that the Respondent has never recovered the initial loan amount, which has now attracted a huge interest.
- (e) It is in the interest of justice that this Honourable Court grants this application.

The main suit was brought by summary procedure. The Respondent thereby seeks to recover shs82, 875,000/= arising out of a loan of Shs39, 000,000/= advanced by the Respondent to the Applicant payable within two months with interest at a rate of 15% per month.

The Applicants are seeking leave under Order 36 rule 3 and 4 of the CPR to defend the suit. The law is that the applicant for such leave must show by affidavit or otherwise that there is a bonafide triable issue of fact or law. Any defence raised should be stated with sufficient particulars as to appear genuine and not generally vague statements denying liability. See: Muluku Interglobal Trade Agencies Vs Bank of Uganda (1985) HCB 65; Tororo District Administration Vs Andalalap Industries Ltd (1997) IV KALR 126

This application is supported by an affidavit, deponed to by the 1st Applicant Kasozi G. Michael. In paragraphs 3 and 4 he states that he pledged his Certificate of Title to land at Buddu Block 101 Plot 24 at Kasambya Masaka as security for the loan. That it was agreed that should the said loan not be paid within two months, the Respondent would sell the security without recourse to Courts of law. In paragraph 6 he expresses surprise that the Respondent has never sold off the security to recover the loan amount, which he contends has now attracted a huge interest. He

further states, in paragraph 5, that he asked for the certificate of title from the Respondent so that he could sell off the land to the ready and willing buyers but that the Respondent refused to handover the certificate of title.

The Respondent filed an affidavit in reply dated 17th September 2007. I note that the Respondent does not therein deny or rebut any of the applicant's averments on oath in paragraphs 4, 5 and 6 of the affidavit in support..

In paragraph 4 of his affidavit in reply the Respondent avers that the Certificate of Title deposited as security by the 1st Applicant was not registered in the 1st Applicant's names. Ms Joy Ntambirweki, counsel for the Respondent, submitted that in the circumstances there was no way the Respondent could sell the land. Annexure "A" to the Respondent's affidavit is a photocopy of the Certificate of Title to the land. The Registered Proprietor is Ausi Mugenyi, who is none of the Applicants. However annexure B is a blank Transfer Deed signed by the said Ausi Mugenyi. It would appear that this blank transfer deed was intended to facilitate the sale of the land.

The above facts raise three issues:-

1. What was the effect of the Respondent's failure to exercise his right under the loan agreement to sell the land following the Applicant's failure to pay off the loan within the agreed period of two months?
2. What was the effect of the Respondent's failure to release the Certificate of Title for sell to ready and willing buyers?
3. Under what circumstances was the Certificate of Title, registered under the proprietorship of a stranger to the loan received by the Respondent as security for the loan to the Applicants?

In his submission Mr. Matovu, Counsel for the applicant, argued that the Respondent's failure to sell the land had resulted into the accumulation of the interest which he now demands. The loan

was of Shs39, 000, 00/= advanced on 5th October 2006 for a period of two months at a monthly interest of 15%. There is an issue whether in the circumstances the Respondent is entitled to the accumulated interest.

In view of the above identified traible issues this application is allowed. Applicants are to file their Written Statements of Defence within 14 days from the date hereof. The Applicants are awarded costs of this application. I so order.

HON. MR. JUSTICE LAMECK N. MUKASA

JUDGE

25/10/2007