

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0114-2008
(Arising from HCT-00-CC-CS-051-2008)

ZZIMWE HARDWARE & CONSTRUCTION ENTERPRISES LTD APPLICANTS

VERSUS

BARCLAYS BANK (U) LTD RESPONDENT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application by Notice of Motion under order 36 rule 4 , order 52 rule 1 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that:-

- (i) Unconditional leave to appear and defend the main suit be granted to the Applicant.
- (ii) Costs for the application be provided for.

The main suit was brought by summary procedure. The Respondent, Barclays Bank of Uganda Ltd, therein seeks to recover from the Applicant, M/s Zzimwe Hardware and Construction Enterprises Ltd, and two others Andrew Kassaga and Paul Kassaga, a sum o f Ugshs. 2,211,653,283.05

being monies claimed due under overdraft facilities extended to the defendants, accrued interest at the contractual rate plus costs of the suit.

The grounds for this application are that:-

- (a) On the 27th May 2004 the Applicant was given a loan facility of US\$600,000 by Nile Bank Ltd.
- (b) The Applicant's loan of US\$600,000 has since been paid off.
- (c) The Applicant has deposited a sum of Ushs4,807,527,500/= into its account No. 07101000339 and therefore the Applicant has deposited a sum of Shs3,882,892,615/= in repayment of its advances and interest.
- (d) The amounts claimed on the overdrafts are wrong and based on charging interest, late penalty fees and other deductions not due.
- (e) The Applicant has not dealt with the Respondent and is not aware of its rights but the sum of Shs663,182,701/= is due from the Applicant in respect of the monies taken from Nile Bank Uganda Ltd.
- (f) It is just, fair and equitable that unconditional leave to appear and defend be granted to the defendant/applicant.

The law governing applications for leave to defend a summary suit is that the applicant 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 Mukulu Interglobal Trade Agencies Vs Bank of Uganda (1985) HCB 65, Tororo District Administration Vs Andabalap Industries (1997) IV KALR 126.

The Respondent's claim against the defendants in the main suit is for a sum of Ugshs2,211,653,283/05 being monies due under overdraft facilities extended to the defendants and accrued interest at the contractual rate. The application to defend the suit is supported by an affidavit deponed to by the General Manager of the Applicant, Musa Nsimbe. In the affidavit the Applicant does not deny the overdraft facilities and does not deny owing money to the Respondent under the said facilities. The core of the applicant's claim is found in paragraph 8 of the affidavit where the deponent states:-

“9. The amounts claimed on the overdrafts are wrong and based on charging interest, late penalty fees and other deductions not due.”

The applicant admits the facility but claims to have partially repaid. In paragraph 11 of the affidavit the applicant contends that the amount due is shs663,182,701/=. The applicant thereby disputes the amount of Shs2,211,653,282/05 claimed by the Respondent and also disputes the computation of interest and penalties.

The Respondent filed an affidavit in reply deponed to by its Manager Corporate Recoveries Ms Esther Masami Birungi. She therein states:-

“11.THAT the Applicant defaulted on the repayment terms agreed under the Agreement, with Nile Bank Ltd

12. THAT by reason of non repayment, the facilities due have continued to attract interest and a penalty such that the applicant stands indebted to the Respondent in the sum of Ugshs2,211,653,283/05.”

Annexure “C” to the affidavit is the Applicant’s loan statement account. It shows interest and penalty deductions among others. The rates and basis of deductions cannot be established from this statement. Counsel for both parties in their respective submissions concede that the issue is reconciliation of the account to determine the balance. Mr. Kasirye in his submissions argued, and rightly so, that the relationship between the applicant and the respondent was governed by contractual documents which set out how the respondent charges the principle, the penalty and interest. However the issue remains whether the computations had been correctly done as per the facilities agreements/documents. Counsel referred to an Audit Report by Ms Mungereza and Kalisa but this report was not availed to court.

Mr. Kasirye argued that the Applicant had not adduced any evidence to show where the interests and penalties had been wrongly computed. The applicant has raised the issue of computation of interest, penalties and other deductions and thereby of the amounts due on the facilities. In Abubakar Kato Kasule Vs Tomson Muhwezi (1992 – 1993) HCB 212 it was held that at this stage court was not entitled to inquire into the merits of the issue raised. In the instant case if the facts alleged by the applicant were established there would be a plausible defence to the amount claimed.

So this application is allowed. The Applicant is to file a Written Statement of defence within 14 days from the date hereof. The Applicant is awarded costs of this application. I so order.

Hon Mr. Justice Lameck N. Mukasa

Judge

22nd august 2008