

**THE REPUBLIC OF UGANDA**

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

**HCT – 00 – CC – MA - 505 - 2008**

**B.D.S LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT**

**VS**

**IMAD F. SHTEIWI ::::::::::::::::::: RESPONDENT**

**RULING**

This is an Application brought by motion under Section 33 of the Judicature Act, Section 93 CPA, order 36 Rule 11, order 22 rule 34 and Order 52 Rule 1 & 3 of the CPR.

The Defendants/Applicants seek to set aside the ex-parte Decree and warrant of execution passed in Civil Suit No. 231 of 2008, the stay of execution in the Civil suit No. 231of 2008 and to be granted unconditional leave to defend together with costs of this application.

The Plaintiff issued the claim based on the issuance of several cheques by Jael Limited the previous name of the company BDS Limited in the total sum of 55, 000 dollars. These cheques were dishonoured, there was no come back or communication from the Applicants/Defendants as to proposals with respect to payment of the dishonoured cheque and the Plaintiffs correctly sued the Applicants/Defendants on the cheque.

In setting aside the orders or the judgment in default in the main suit, the court has to consider whether the Applicants/Defendants were served with the Application and whether there are any merits in the case.

The court is satisfied that the Court process server had properly served the Applicants and Defendants at the company address in Hannington road and in so far as the merits of the case are concerned this is an action brought on a cheque and the court does not propose to go into any further detail.

However in view of the large amount in the case in the sum of 55,000 dollars, the court shall give the Defendants/Applicants the opportunity to defend the action on condition that they pay the sum of 55,000 dollars into the court within the next 14 days subject thereto the Decree and stay of execution shall be stayed.

In default of payment of the said sum of 55,000 dollars into the court, the original decree will be revived and the Plaintiffs will be at liberty to go ahead and enforce the sale.

Just to clarify the situation for the future, in the event the Applicants/Defendants have any difficulties in paying the monies into the court, they are at liberty to apply to the court for extension of time or to communicate their problems to the Plaintiff/Respondents and seek their mutual consent whereby the time for payment into the court will be or can be extended without the need to come back to the court.

The costs of this Application are the Plaintiffs'.

**Anup Singh Choudry**

**Judge**

**21/10/2008**